



BRINGING ESC RIGHTS HOME

**APPLYING IRELAND'S
ECONOMIC, SOCIAL
AND CULTURAL
RIGHTS OBLIGATIONS
TO BUDGETARY
POLICY**

**AMNESTY
INTERNATIONAL**





Published in 2014

Acknowledgements

This publication was made possible by funding from the Atlantic Philanthropies.

A special thank you to the Free Legal Advice Centres (FLAC) for contributing to Chapter 3 of this paper.

Passages from this publication may be reproduced with attribution to Amnesty International Ireland.

Copyright Amnesty International Ireland.

Front cover image: © spectrumblue/Shutterstock

PREFACE

Colm O’Gorman
Executive Director
Amnesty International Ireland

One does not often see ‘human rights’ and ‘budgets’ together in the same sentence, especially in governments’ policies and debates. But they are firmly linked as demonstrated in this, our final in a series of three papers charting key ways in which the Irish Government could better protect people’s economic, social and cultural (ESC) rights.

Despite tentative signs of Ireland’s economic recovery, human rights - in particular, ESC rights - have been negatively impacted by the economic crisis and the Government’s responding austerity measures. The potential for human rights to act as a guide and framework for better decision making and governance, especially when a country like Ireland is emerging from recession, is still missing from the debate. This needs to change. Otherwise we will repeat the mistakes of the past.

Government law and policy, including fiscal measures such as the budget, must be based on human rights and must reflect Ireland’s ESC rights obligations. Not only is this what the Irish State legally signed up to when it ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1989; it is also good governance. ESC rights are not only concerned with how much the Irish State budgets and spends on areas such as housing, education and health judged against the resources it has, but also, importantly, how effectively and transparently it uses those resources allocated towards its stated human rights outcomes.

This paper aims to inform and guide law and policy makers in Ireland to better fulfil the State’s human rights obligations when determining and implementing its budgets. We hope it also proves useful for civil society organisations and individuals, to better argue how human rights could and should influence the budgetary process. This paper summarises the evolving understanding at an international level of states’ human rights obligations, in particular their ESC rights obligations, when designing and implementing budgetary policy.

When tough decisions need to be made, particularly on the allocation of resources, a principled, outcomes-focussed and robust framework is required to guide government decision making. Human rights offer such a framework. Human rights are the decades-old consensus of nations on how people deserve to live and be treated, and how governments can and must make that happen. Human rights do not exist in some idealist abstract, divorced from economics and hard political choices. They were designed to be, and are in reality, highly achievable. They recognise that states do not have infinite amount of resources and that the full enjoyment of many ESC rights cannot be achieved overnight. But they also lock in the need for non-discrimination and for the protection of a basic standard of living for everyone, no matter what the resource challenges.

Decisions around the budget must be reached in a participatory manner. This means giving everyone the opportunity to understand how the budget works and to engage in a meaningful way. The budget cycle is complex, involving many decisions by different bodies over a yearly period. But it cannot be considered a sterile process beyond the knowledge and grasp of the public. ‘Fiscal literacy’, by making the budget more understandable, is essential to ensuring peoples’ right to participate. Some progress has already been made by the Government in facilitating engagement by civil society, but this must be built upon.

Beyond that, as this country begins to recover from the havoc caused by the economic crisis, we cannot afford to be left with a lasting social crisis. Ireland’s ESC rights obligations should inform decisions taken in the context of the budget to guide the Government on who and what to prioritise and to ensure that no section of society is left behind.

INTRODUCTION

“Clearly, economy and human rights are closely linked, even if their relationship is not necessarily always harmonious. On the one hand, human rights ... are [an essential] condition for effective economic activity. On the other hand, we must be mindful of the risks that powerful economic players may pose for rights and freedoms”.

Francoise Tulkens, former Judge and Vice-President of the European Court of Human Rights¹

Strengthening the protection of economic, social and cultural (ESC) rights is a global priority for Amnesty International (AI).

This is the third in AI Ireland’s series of three papers entitled *Bringing ESC Rights Home*, aimed at strengthening the protection of ESC rights in Ireland. The first, entitled *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*, was published in May 2014. It is designed to help guide law and policy makers in Ireland, in considering how the legal enforceability of ESC rights can be strengthened, particularly in light of the government-established Constitutional Convention’s recommendation in February 2014 that the Irish Constitution, Bunreacht na hÉireann, be amended to better protect ESC rights. The second, *Bringing ESC Rights Home: Ireland and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, was published in July 2014. It sets out the contents of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP ICESCR), the reasons why Ireland should ratify, steps taken by other states to ratify and the relevance of the OP ICESCR to a range of Government departments.

The global economic and financial crises, and the austerity measures adopted by numerous governments in response, have affected many ESC rights. However, human rights have largely been excluded from the debate on these crises. Moreover, it has been noted that “human rights have not been integrated in any meaningful way to recovery efforts” by states.²

This is so despite the obligation on states, including Ireland, to ensure that everyone can enjoy adequate levels of ESC rights without discrimination. This obligation means that the Irish Government must continue to protect human rights in times of economic hardship and must pay particular attention to the needs of the most vulnerable.

Commentators have noted that “[in] times of economic crisis, [ESC] rights become more, not less important and states’ roles in ensuring them is greater, not lesser, as it becomes more difficult for individuals to ensure their own wellbeing”.³ Moreover, compliance with human rights standards also contributes to economic recovery by establishing conditions which are necessary for economic growth.⁴ At the same time, ESC rights provide a normative framework to help guide policy makers particularly when difficult decisions around the allocation of resources must be made. ESC rights obligations can assist policy makers in knowing who and what to prioritise to ensure fairer, more equal outcomes for all.

The Irish Government must balance measures adopted in response to the crisis in Ireland with its obligation to respect, protect and fulfil ESC rights. Laws and policies adopted as responses to the crisis must be based on human rights standards and must not discriminate against the most marginalised and vulnerable people in our society.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises that states do not have an infinite amount of resources and that the full enjoyment of many ESC rights cannot be achieved overnight. However, states must ensure that the resources they do have are allocated in an appropriate manner. This is a critical element of achieving the enjoyment of ESC rights.

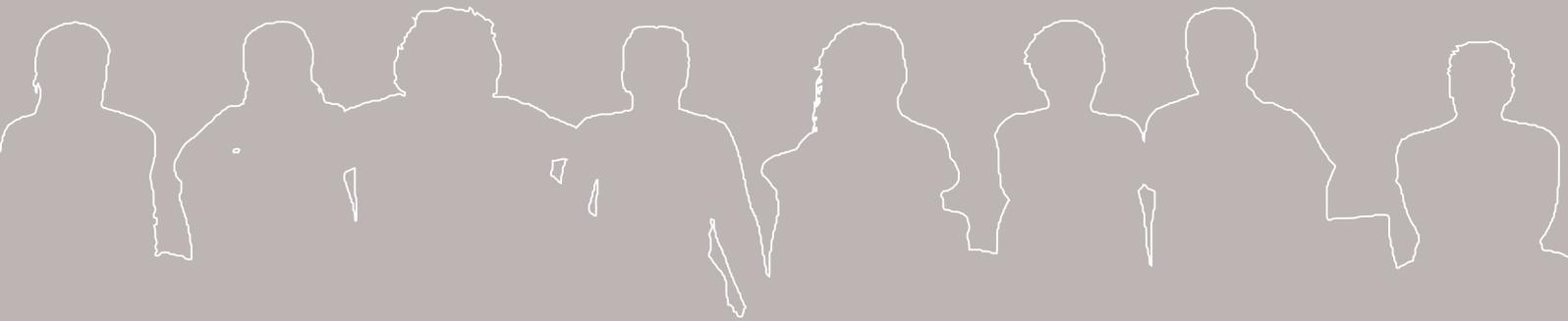
This paper is designed to be a compendium of information useful to the Government in order to assist it in ensuring that its economic policy, particularly the budget, is in line with and reflects its ESC rights obligations. Chapter 1 provides an overview of ESC rights. Chapter 2 outlines the obligations of the state under the ICESCR. Chapter 3 is primarily directed at civil society organisations and gives an overview of budget analysis frameworks. AI Ireland is grateful to the Free Legal Advice Centres (FLAC)⁵ for contributing to Chapter 3. Chapter 4 outlines guidance from the CESCR, human rights bodies and international experts to assist states in the protection and realisation of ESC rights. Considering that a priority for AI is strengthening the legal protection of ESC rights, Chapter 5 considers the accountability role that courts have played with regard to states' policy responses to the economic crisis and how courts can engage with the budgetary process whilst at the same time respecting the separation of powers between the different branches of government.

The paper ends by making a number of recommendations on how a human rights based approach could be adopted in economic policy making, particularly the budget, and how greater protection can be afforded to ESC rights in Ireland.

An Annex to this paper contains an overview of the Irish budgetary process and cycle.

TABLE OF CONTENTS

Chapter 1:	An overview of economic, social and cultural rights	7
Chapter 2:	The nature of States Parties' obligations under the ICESCR	13
Chapter 3:	Budget analysis to monitor implementation of ESC rights obligations	27
Chapter 4:	Guidance from the CESCR, human rights bodies and international experts	37
Chapter 5:	The legal enforcement of ESC rights in the context of the economic crisis	59
Chapter 6:	Conclusions and Recommendations	69
Annex:	Irish budgetary process and cycle	76



CHAPTER 1:

AN OVERVIEW OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social and cultural (ESC) rights cover a range of rights which are protected at both a regional and international level in international treaties which Ireland has ratified. The content of these treaties and the meaning of ESC rights are outlined in this chapter.

What are economic, social and cultural rights?

ESC rights are those human rights relating to issues such as healthcare, education, housing, standard of living, food, water and sanitation, social security, the workplace, family life and participation in cultural life. Along with civil and political rights,⁶ they are part of the international body of human rights.

ESC rights and human rights law more broadly, are outcomes focused, but are also concerned with the process by which these outcomes are achieved. For example, ESC rights require the Government to take steps, over time, to deliver on those ESC rights outcomes identified in international law. They do not specify the policies and actions which must be pursued to deliver these rights but they require that the Government adopts appropriate processes for planning and decision-making and that decisions are made in a transparent, participatory manner, using reliable evidence.

Ireland has binding legal obligations to uphold ESC rights because it has ratified a range of both international and regional treaties which protect these rights.

International

International protection was first given to ESC rights in the Universal Declaration of Human Rights (UDHR) in 1948.⁷ Although it is not a binding treaty, the UDHR has significant status in international law and has been widely accepted as representing the fundamental norms of human rights.

In 1966, ESC rights were given specific protection in the International Covenant on Economic, Social and Cultural Rights (ICESCR). This is now the main United Nations human rights treaty which protects these rights and is legally binding. Together with the International Covenant on Civil and Political Rights (ICCPR) and the UDHR, it forms the International Bill of Rights. Ireland signed the ICESCR in 1973 and ratified it in 1989, thereby agreeing to be legally bound by its provisions.

The ICESCR protects the following ESC rights:

Economic Rights

- The right of everyone to the opportunity to gain their living by freely chosen or accepted work and to just and favourable conditions of work
- The right of everyone to form trade unions, join a trade union of her/his choice and the right to strike

Social Rights

- The right to social security
- Protection of and assistance to the family
- The right of everyone to an adequate standard of living for them and their family, including food, clothing and housing, the continuous improvement of living conditions and the right to be free from hunger
- The right of everyone to the highest attainable standard of physical and mental health
- The right of everyone to education

Cultural Rights

- The right of everyone to take part in cultural life, to enjoy the benefits of scientific progress, to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he/she is the author

The UN Committee on Economic, Social and Cultural Rights (CESCR) is mandated to oversee States Parties' compliance with the provisions of the ICESCR. It examines periodic reports submitted by states on their compliance with the ICESCR and thereupon makes concluding observations and recommendations to states.⁸

The CESCR also issues General Comments on a regular basis which have given further definition to the rights protected in the ICESCR. These include, but are not limited to, General Comments on specific rights such as the right to health,⁹ housing¹⁰ and education¹¹ and also more broadly on the nature of States Parties' obligations, for example General Comment 3.¹² This General Comment is discussed in more detail in Chapter 2.

The Optional Protocol to the ICESCR entered into force on 5 May 2013, following its ratification by 10 UN Member States.¹³ The Protocol allows for individuals and groups of individuals to make complaints to the CESCR if they believe that their rights under the ICESCR have been violated and if they have exhausted all available domestic remedies. Upon the examination of a complaint, the CESCR makes its findings

and can make recommendations to the state. Ireland signed the Optional Protocol on 23 March 2012 but has not yet ratified it, so this recourse is not yet available to people in Ireland.



© shpock/Shutterstock

Ireland has ratified a number of other international human rights treaties which include provisions on ESC rights. These include the UN Convention on the Elimination of Racial Discrimination (CERD)¹⁴ and its complaints procedure; the Convention on the Elimination of Discrimination against Women (CEDAW)¹⁵ and its complaints procedure; and the Convention on the Rights of the Child (CRC) and its complaints procedure ratified very recently by Ireland, on 24 September 2014.¹⁶ Ireland has signed and promised to ratify shortly the UN Convention on the Rights of Persons with Disabilities (CRPD).¹⁷ The CRPD also has a complaints procedures to which Ireland has not yet signed up.

Other international treaties also protect elements of ESC rights. For example, the Fundamental Conventions of the International Labour Organisation (ILO), which Ireland has ratified,¹⁸ protect the rights of workers covering issues such as the rights to organise and collective bargaining, equal remuneration, protection against discrimination, protection against forced labour and child labour, and freedom of association.¹⁹

Other relevant treaties include the UNESCO conventions relating to areas such as education and culture.²⁰

Regional

European Social Charter (Revised)

At a regional level, the European Social Charter, a treaty of the Council of Europe, was adopted in 1961 and revised in 1996. The Charter guarantees economic and social rights such as the right to health, housing, employment, legal and social protection, free movement of persons and non-discrimination.

The European Committee of Social Rights is mandated to oversee States Parties' compliance with the provision of the Charter. It adopts conclusions on national reports submitted by States Parties on an annual basis. Under the Collective Complaints Protocol to the Charter, which Ireland has ratified, certain organisations (but not individuals) may lodge complaints of violations of the rights in the Charter with the Committee. The Committee then adopts decisions on these complaints.

Through its decisions, the Committee has elaborated what the rights in the Charter entail. For example, on the right to housing for the family, the Committee in *ERRC v Bulgaria*²¹ held:

“Article 16 guarantees adequate housing for the family, which means a dwelling which is structurally secure; possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; is of a suitable size considering the composition of the family in residence’ and with secure tenure supported by law... The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period”.²²

Ireland ratified the Charter in 1964 and the revised Charter in 2000.²³ Provisions not accepted by Ireland are: Article 8(3) (regarding entitlements to maternity leave); Article 21 (dealing with the right to information and consultation of workers); Article 27(1)(c) (dealing with the development or

promotion of child day care services and other childcare arrangements); and Article 31(1), 31(2) and 31(3) which deal with the right to housing.²⁴

There have been two decisions on collective complaints against Ireland to date.²⁵ Two further collective complaints on the issue of housing were lodged in April 2013 and July 2014²⁶ but at time of writing have yet to be determined. Further details on complaints can be found in Chapter 1 of AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.²⁷

Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights enshrines the fundamental rights protected in the EU. It contains many of the rights in the European Convention on Human Rights (ECHR). However, unlike the ECHR, the Charter also explicitly protects, a number of economic and social rights such as the right to education, the right of collective bargaining, the right to work, the right to social security and social assistance, and the right to healthcare.²⁸



© Lisa S./Shutterstock

The Charter applies to EU institutions and bodies and Member States when they are implementing EU law. For example, the Charter will apply when EU countries adopt or apply a national law which implements an EU directive or when their authorities apply an EU regulation directly. Examples include implementation of EU law concerning communicable diseases,²⁹ social security³⁰ and worker's rights.³¹ The European Commission monitors the implementation of the Charter.³² It can also initiate infringement proceedings before the Court of Justice of the European Union (CJEU) where the issue concerns the failure to adequately implement EU law.

Under Article 29.4 of the Irish Constitution, EU treaties form part of Irish law, including constitutional law. The Charter became legally binding on the EU and Member States with the entry into force of the Lisbon Treaty in 2009. The Charter, like EU treaties, prevails over any conflicting secondary EU legislation and over conflicting national law.³³ The Charter can be applied in national courts if cases involve the application of EU law.³⁴ National courts can in turn refer cases to the CJEU. Its rulings are binding on Member States.³⁵ There are a number of examples of Irish courts referring a case to the CJEU regarding the compatibility of national or EU law with the contents of the Charter.³⁶ These are outlined in further detail in Chapter 1 of AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.

The European Convention on Human Rights (ECHR)

While the ECHR does not explicitly protect the majority of ESC rights (exceptions are the right to property and the right to education), the European Court of Human Rights, in the case of *Airey v Ireland*,³⁷ affirmed that an interpretation of the ECHR may extend into the sphere of economic and social rights and that there is no water-tight division between civil and political and economic and social rights.

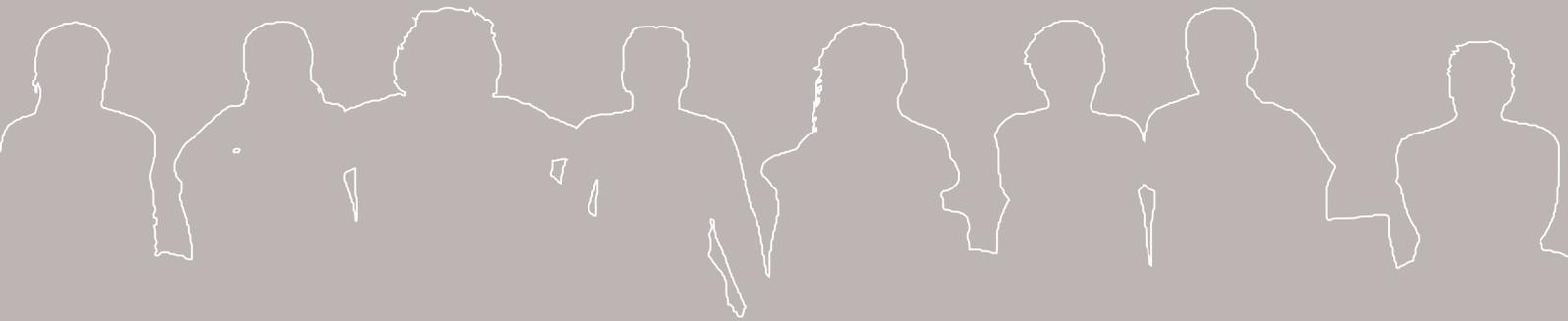
For example, in the case of *Moldovan and others v Romania (No. 2)*³⁸ the Court found a violation of Articles 3 (prohibition of torture, inhuman or degrading treatment) and 8 (right to respect for private and family life) on the basis of the unacceptable living conditions of Roma following the destruction of their homes.

Other examples include that of *López Ostra v Spain*,³⁹ concerning industrial pollution, discussed further in Chapter 1 of AI Ireland's paper, *Bringing ESC Rights Home: the case for legal protection of economic, social and cultural rights in Ireland*.

Under the European Convention on Human Rights Act 2003, which incorporates the provisions of the ECHR into Irish law, Irish courts must interpret and apply Irish law in line with the ECHR insofar as possible.⁴⁰

For example, in the 2008 case of *Donegan v Dublin City Council and Ors*,⁴¹ the High Court found that Section 62 of the Housing Act 1966 (which allows for the summary eviction of local authority tenants in the District Court) was incompatible with Article 8 of the ECHR (right to private and family life) and Article 6 (right to a fair hearing).⁴² This case is an example of the link between civil and political rights and ESC rights such as the right to adequate housing which protects against forced evictions.

These international and regional mechanisms are discussed in more detail in Chapter 1 of AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.



CHAPTER 2:

THE NATURE OF STATES PARTIES OBLIGATIONS UNDER THE ICESCR

States, including Ireland, have a series of duties under the ICESCR to give effect to the rights protected therein. These obligations apply even in times when resources are limited. As has been noted, “States cannot use the economic damage caused by the crises to justify actions or omissions that amount to violations of basic human rights obligations.”⁴³ These obligations are examined in this chapter.

The three main obligations of states under human rights law are characterised as the obligations to respect, protect and fulfil human rights.⁴⁴ These obligations apply even in times of resource constraints and are relevant to policy making by the Government in a number of ways:

- The **obligation to respect** means that states must not interfere directly or indirectly with the enjoyment of rights. This includes the rights of persons in the state’s own jurisdiction but also, as has been noted, the rights of persons across international borders “by inhibiting the ability of another state to comply with its own human rights obligations (for example, by implementing policies that negatively affect citizens of other countries, or insisting on international trade, finance or debt-related commitments which will affect the capacity of another state to realise rights)”.⁴⁵
- The **obligation to protect** requires states to prevent, investigate, punish and ensure redress for harm caused by abuses of human rights by third parties, such as private individuals, commercial enterprises or other non-state actors. This duty implies that governments have an obligation to regulate the market in order to prevent exploitation and abuse (such as in financial and housing markets), as well as an obligation “to regulate private market actors where their activities may foreseeably have profound systematic consequences on economic and social rights (for example, where they provoke a systemic financial crisis that would have widespread effects on livelihoods)”.⁴⁶
- The **obligation to fulfil** requires states to take steps towards the full realisation of human rights. This may require states to adopt legislative, administrative, budgetary, judicial and other measures to achieve this aim.⁴⁷ For example according to the CESCR, the obligation to fulfil the right to health “requires States parties ... to give sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation, and to adopt a national health policy with a detailed plan for realising the right to health”. It also requires states to provide for immunisation programmes against major infectious diseases; appropriate training of healthcare professionals; adequate numbers of health-related facilities; accessibility of information and education related to health; the provision of mental health, sexual and reproductive health services; and the provision of a health insurance system, be it public, private or mixed, that is affordable for all.⁴⁸

Other fundamental and interlinked human rights principles are participation, transparency and accountability.

Participation: This requires states to ensure that rights-holders are able to express their needs and concerns and to influence decision making that affects them.⁴⁹ States must ensure that those affected by fiscal and economic policy are able to participate in a meaningful way.

The then UN Independent Expert on Human Rights and Extreme Poverty stated that:

“In formulating policies in response to the crises, such as reductions in public expenditure, increases in taxation or entering into conditional loans with donors or financial institutions, States must allow for the broadest possible national dialogue, with effective and meaningful participation of civil society, including those who will be directly affected by such policies.

To allow the public to participate democratically in discussions and decision making, information about proposed policy measures must be disseminated widely and in a way that is easily understood. Participatory mechanisms should be established and the capacity of rights-holders to know their rights must be strengthened.

Governments should encourage independent organisations and academic institutions to develop alternative policy options and to carry out assessments of the social impact of all options and proposed measures. **Recovery measures should also be open to oversight, including judicial scrutiny, and public officials involved in economic policy should be accountable for any policy decisions that endanger the enjoyment of human rights.”**

Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, UN Doc. A/HRC/17/34, 17 May 2011, para 26-28.



© Rawpixel/Shutterstock

“In order to satisfy their human rights obligations and thus ensure participation and transparency in policy formulation, States should construct permanent structures and pathways for consultation with individuals, civil society, community organisations, grass-roots movements and the academic community. They should also take measures to invest in the capacity of these groups to contribute to and participate in policy formulation.”

Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, UN Doc. A/HRC/17/34, 17 May 2011, para 90.

“A human rights approach stipulates that legal and policy measures to strengthen the accountability and transparency of financial systems should be taken. In order for States to meet their duty to protect, the banking sector should be regulated to obligate banking institutions to serve the interests of society by, for example, ensuring access to credit without discrimination, especially those struggling under increased economic burdens. States should ensure adequate means of redress for those adversely affected by the actions taken by financial sector institutions, and adopt regulations that discourage harmful practices by providing for accountability mechanism that penalise risky behaviour and prosecute perpetrators.”

Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, UN Doc. A/HRC/17/34, 17 May 2011, para 84.

What does accountability really mean?

Accountability is not simply a means through which we react to or repair failure or wrongdoing. It is a **vital tool** for those charged with making complex and difficult decisions; one that **can guide and strengthen decision-making** and the development of law, policy and practice. Real accountability requires for instance that those in positions of authority who make decisions which impact significantly on the lives of others should **consult with** and be accountable to those same people in making such decisions and implementing them. In this way accountability becomes an important tool to inform **good decision-making** and **ensure that policy decisions serve the very people they most affect**.

Article 2 of the ICESCR

The nature of the state’s obligations under the ICESCR derives from Article 2. Article 2 acknowledges that states may not be able to achieve the enjoyment of all ESC rights overnight and may require time to do so, but that they should continue to take deliberate, concrete and targeted steps towards this goal. It lays out clearly what states must do to achieve that goal and also outlines certain immediate obligations on states such as non-discrimination or delivering on minimum core content of rights.

Article 2 ICESCR

- (1) Each party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant, by all appropriate means, including particularly the adoption of legislative measures.
- (2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- (3) Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.

General Comment No. 3 and other guidance from the CESCR on states' obligations

In its General Comment No. 3 “The nature of States Parties obligations”,⁵³ concluding observations on States Parties reports,⁵⁴ and in a number of statements,⁵⁵ the CESCR has provided further details on what these obligations mean in practice.

Progressive realisation

Article 2(1) of the ICESCR reflects the fact that it may not be possible to achieve the full enjoyment of ESC rights in a short period of time, particularly as resources are often limited. ESC rights may therefore be achieved progressively over time. As the CESCR notes in General Comment No. 3, progressive realisation is seen as “a necessary flexible device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realisation of [ESC] rights”.⁵⁶

However, the CESCR makes clear that progressive realisation must be understood in light of the overall objective of the ICESCR, “which is to establish clear obligations on States Parties in respect of the full realisation of the rights [in the ICESCR]. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal”.⁵⁷

Economic crisis and progressive realisation

Economic and financial crises and a lack of growth impede the progressive realisation of ESC rights and may lead to regression in the enjoyment of these rights.

The CESCR has recognised that some adjustments to the implementation of some of the rights in the ICESCR may at times be inevitable. However, States Parties should not act in breach of their obligations under the ICESCR.

Any proposed policy change or adjustment by the State Party in reaction to an economic crisis must meet the following requirements:

- 1) The policy must be a temporary measure covering only the period of the crisis;
- 2) The policy must be necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act would be more detrimental to ESC rights;
- 3) The policy must not be discriminatory and must comprise all possible measures, including tax measures, to support social transfers to mitigate inequalities that can grow in times of crisis and to ensure that the rights of the disadvantaged and marginalised individuals and groups are not disproportionately affected;
- 4) The policy must identify the minimum core content of rights or a social protection floor, as developed by the International Labour Organisation, and ensure the protection of this core content at all times.

Ariranga, G. Pillay, Chairperson, UN Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012.

Immediate obligations

A State Party to the ICESCR must fulfil a number of immediate obligations which are not subject to progressive realisation. In its General Comment No. 3 the CESCR outlines these obligations:

The obligation to guarantee that relevant rights will be exercised without discrimination

This obligation requires that states both act to prevent direct⁵⁸ and indirect⁵⁹ discrimination, and provide redress where discrimination occurs.

Vulnerable or disadvantaged groups often suffer discrimination and are faced with the greatest barriers when trying to access their rights. They must be prioritised by the state when implementing its human rights obligations and must be given “first call” when allocating resources.⁶⁰ Vulnerable groups include those living in poverty, migrants, people with disabilities, older people, children and minority ethnic groups such as Travellers. Often individuals in these groups will face multiple forms of discrimination such as that based on gender, ethnicity or national origin. In many instances the economic crisis together with austerity measures have had a disproportionate impact on these groups across Europe.⁶¹ In ensuring the equal enjoyment of ESC rights by certain groups or individuals in society the state may need to adopt special measures until the intended objective is achieved.⁶²

The duty to prioritise the most vulnerable forms part of the immediate obligation of non-discrimination.

For example, regarding the right to the highest attainable standard of health:

“...the Covenant proscribes any discrimination in access to health care ... on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDs), sexual orientation and civil, political, social or other status, which has the intention or the effect of nullifying or impairing the equal enjoyment or exercise of the right to health. The Committee stresses that many measures, such as most strategies and programmes designed to eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information... **even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes**”.

General Comment No. 14: The right to the highest attainable standard of health (Article 12 of the Covenant), 2000, UN. Doc. E/C.12/2000/4, para 18.

The need to ensure access to independent complaints mechanisms such as national equality bodies for victims of discrimination has been highlighted by human rights bodies. For instance, the Commissioner for Human Rights of the Council of Europe has recommended that national equality

legislation should include socio-economic status as an explicit ground of discrimination.⁶³ AI Ireland has also made such a recommendation in respect of Ireland's equality legislation.⁶⁴

The obligation to take steps to achieve progressively the full realisation of the rights in the ICESCR

The obligation to take steps means that while the rights in the ICESCR may be achieved progressively over time, the state has an immediate obligation to take steps towards that goal. As the CESCR has noted, “[s]uch steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant”.⁶⁵

The obligation to take steps does not require or prohibit any particular type of government or economic system, as long as “it is democratic and that all human rights are thereby respected”.⁶⁶ States therefore have a margin of appreciation to take steps and adopt measures most suited to their specific circumstances.⁶⁷

According to Article 2(1), in order to satisfy the obligation to take steps the state should adopt “all appropriate means, including particularly the adoption of legislative measures”. The CESCR has made clear that legislation is “highly desirable and in some cases may even be indispensable”.⁶⁸ For instance, it could be difficult to combat discrimination if there is no “sound legislative foundation for necessary measures”.⁶⁹

While legislative measures are specifically referred to in Article 2(1) these are not the only means by which the rights in the ICESCR should be progressively realised. The provision of judicial remedies might also be considered appropriate in addition to legislation, as well as administrative, financial, educational and social measures.⁷⁰ The CESCR emphasises that this is a non-exhaustive list. The appropriateness of the measures should be determined by the State Party, but is subject to review by the CESCR.⁷¹

The case for giving legal protection to ESC rights in Ireland including in legislation and the Constitution, is set out further in AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.⁷²

The minimum core obligation to ensure at the very least, minimum essential levels of each of the rights in the ICESCR

According to the CESCR, all States Parties to the ICESCR have “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” in the ICESCR.⁷³ The concept of minimum core obligation was developed by the CESCR to describe the minimum expected of a State Party in order to comply with its obligations under the ICESCR.⁷⁴

In its General Comment No. 3 the CESCR noted that:

“A State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter or housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be

read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.”⁷⁵

For example, to meet its minimum core obligation under the right to social security, a State Party would have to do the following:

- To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential healthcare, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education [if a State Party is unable to provide this minimum level for all risks and contingencies within its maximum available resources, it should, after a wide process of consultation, select a core group of social risks and contingencies];
- To ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalised individuals and groups;
- To respect existing social security schemes and protect them from unreasonable interference;
- To adopt and implement a national social security strategy and plan of action;
- To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalised individuals and groups; and
- To monitor the extent of the realisation of the right to social security.

UN Committee on Economic, Social and Cultural Rights, General Comment No.19: The right to social security (Article 9 of the Covenant), 2008, UN Doc E/C/12/GC/19, para 59.

The Commissioner for Human Rights of the Council of Europe has recommended that “[s]ocial protection floors should be developed to ensure the minimum core content of social and economic rights at all times”.⁷⁶ The ILO and others have made similar recommendations.⁷⁷

The Commissioner for Human Rights of the Council of Europe has also highlighted that **constitutional guarantees of social protection protect “social insurance and social assistance programmes from short-term political and financial pressures”⁷⁸ and help to protect against any regression.** In this regard AI Ireland has called for ESC rights to be given greater protection in the Irish Constitution. This is discussed in detail in our paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.

In assessing whether a state has met its minimum core obligation, the CESCR will take into account any resource constraints which may apply in the country. The burden of proof is on the state to show that it made every effort to use all of its available resources to try and meet its minimum core obligations.⁷⁹

Where a country is faced with severe resource constraints it can “begin to meet its obligations, by developing a plan for the accomplishment of the goal over time”.⁸⁰ For example, in Article 14 of the ICESCR, any state which has not been able to achieve free compulsory primary education, at the time of ratifying the ICESCR, must undertake to develop “a detailed plan of action” to achieve this within two years of ratifying.

Austerity measures and minimum core obligation

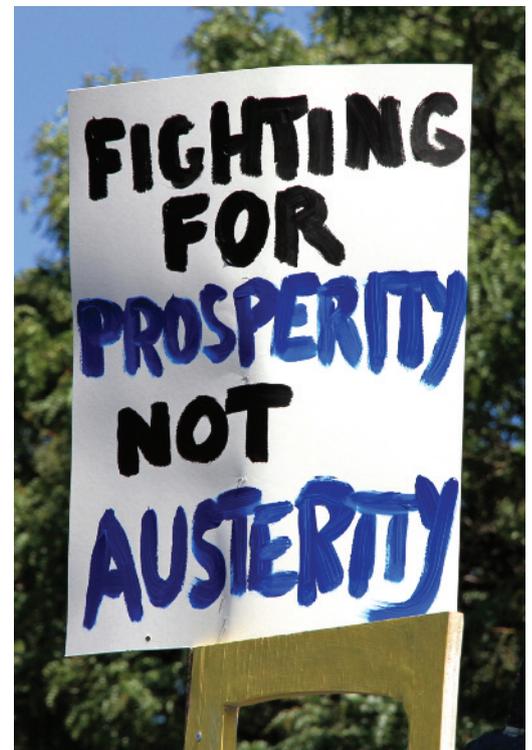
In the context of economic crisis, the CESCR has noted that any austerity measures which may be adopted should “reflect the minimum core content of all the Covenant rights” and that the state take “all appropriate measures to protect that core content under any circumstances, especially for disadvantaged and marginalised individuals and groups”. The State Party should compile “disaggregated statistical information with a view to identifying the individuals and groups affected and ... increase the effectiveness of its efforts to protect their economic, social and cultural rights”.

Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Spain, U.N. Doc. E/C.12/ESP/CO/5, (2012), para. 8.

As has been noted, “the concept that a certain basic minimum level of social and economic rights enjoyment should be guaranteed at times of crisis is in practice a sound principle of economic and social policy, and it could be used as a starting point for integrating human rights law into economic policy debate”.⁸¹

Maximum available resources

A State Party to the ICESCR must take steps “to the maximum of its available resources” to progressively realise the rights in the ICESCR. When determining “available resources” it is important to bear in mind that this is not limited to financial resources; it can encompass the available human resources and natural resources within the state, and information and technology resources which can also be essential in fulfilling the rights in the ICESCR. However, given this paper’s context, we primarily refer here to financial resources.



© ValeStock/iStock

What does the duty to use maximum available resources mean in practice?

According to the International Budget Partnership which has conducted extensive work in the area of budgets and human rights:

- The Government must mobilise as many resources as possible to realise people’s rights. For example, taxes and revenues must be levied and collected in such a way as to maximise the resources available to spend on rights and that takes into account the differences in people’s ability to pay;
- The Government has an obligation to give “due priority” to the realisation of rights. It must prioritise allocation and expenditure on rights-related areas;
- The Government must not divert resources which are necessary to realise rights to other areas;

- Expenditure must be efficient. The Government should not pay more than is necessary for goods and services and it should not spend on unnecessary items. Relevant Government departments should also transfer money to implementing agencies in a well-planned manner throughout the fiscal year to allow for the steady provision of essential services rather than “dumping” of funds at the end of the fiscal year;
- Expenditure must be effective in the realisation of rights. The Government has a duty to purchase goods and services that make a real contribution to the rights at issue;
- Funds allocated to ESC rights must be fully spent. The Government must ensure that institutional barriers are overcome which hinder the adequate functioning and spending of certain programmes. This includes addressing any lack of institutional capacity where necessary; and
- Funds allocated to ESC rights related programmes must not be diverted to other areas.

For further details on these obligations see the International Budget Project, *The Use of Maximum Available Resources: Article 2 and Government Budgets* (IBP, February 2014).

Mobilising resources

Not all of these resources are expected to come from the state itself. Available resources are those which are available in society as a whole, including both the public and private sectors. The state has the “responsibility to mobilise these resources and not to provide them all directly from its own coffers”.⁸²

“In addition, many resource problems centre around the misallocation of resources: to expensive tertiary-level health care, rather than primary or preventive health care; to university education rather than primary education ... to the privileges of the governing elite rather than to low-cost housing. A reordering of priorities will alleviate some of the resource burden in any country”.

Chapman, A. and Russell, S., *Core Obligations: Building A Framework For Economic, Social and Cultural Rights* (Intersentia, 2002), p 11.

As has been noted, “the obligation to use the maximum available resources relates not only to the existing resources of the state, but also resources that could reasonably and equitably be mobilised in the future”.⁸³ In General Comment No. 3, the CESCR also made clear that the phrase “to the maximum of its available resources” includes both the resources existing within a state and those available from the international community through international cooperation and assistance.⁸⁴ This was discussed further by the CESCR in its General Comment No. 2, outlined in Chapter 4.

Examples of finding further ESC rights resources include:

- Reallocation of existing resources;
- Resource generation via fiscal and tax policy (including battling tax evasion);
- Monetary policy and financial regulation;
- Deficit financing;
- Debt restructuring; and
- Development assistance.⁸⁵

For example, with regard to the right to housing:

“States parties, both recipients and provider, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustments should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.”

UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The right to adequate housing (Article 11(1) of the Covenant), 1991, UN. Doc. E/1992/23, para. 19.

(An example of an international financial institution is the International Monetary Fund (IMF)).

In a statement issued in 2007,⁸⁶ the CESCR outlined the considerations it would take into account when assessing whether a state had taken steps to the maximum of its available resources.

These are:

- The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of ESC rights;
- Whether the State Party exercised its discretion in a non-discriminatory and non-arbitrary manner;
- Whether the State Party’s decision to allocate, or not to allocate, available resources is in accordance with international human rights standards;
- Whether several policy options are available, whether the State Party adopts the option that least restricts the rights in the ICESCR;
- The time frame in which the steps were taken; and
- Whether the steps took into account the situation of marginalised and disadvantaged individuals or groups, whether they were non-discriminatory and whether they prioritised grave situations or situations of risk.⁸⁷

Taxation measures are also relevant in determining whether the state has used its maximum available resources. This is discussed further in Chapter 4.

Non-retrogression and justifying cuts

A State Party should not take any retrogressive measures or steps back in achieving the full realisation of the rights in the ICESCR, for example by massively reducing investment in education, health services or social security.

As an example, a significant rise in university tuition fees jeopardising access to education for marginalised and disadvantaged individuals and groups, has been identified by the CESCR as a regressive measure in achieving the full enjoyment of the right to education under Article 13 of the ICESCR.⁸⁸ The introduction of fees in education which had previously been free of charge would also constitute a retrogressive measure.⁸⁹ Any such measures would have to be fully justified by the state.

Circumstances which may impact upon the availability of resources such as where a state faces conflict,⁹⁰ natural disaster or economic recession,⁹¹ may justify some retrogressive measures.⁹² However, the burden of proof⁹³ rests with the state to show that:

- Such measures have been given the most careful consideration;
- The measures are fully justified by reference to the totality of the rights in the ICESCR; and
- The maximum available resources have been used before resorting to such measures. This includes resources available within the state and those available through international assistance and co-operation.⁹⁴

All human rights are inter-related and interdependent

All human rights are “indivisible, interdependent, inter-related and of equal importance for human dignity”.⁹⁵ In other words, all human rights are equally essential and none can be fully enjoyed in isolation. Violations of ESC rights can also result in violations of civil and political rights and vice-versa. For example, violations of the right to housing can simultaneously breach the right to private and family life as protected under the ICCPR and the ECHR.⁹⁶

The Commissioner for Human Rights of the Council of Europe has highlighted the impact that responses to the economic crisis have had on the right of access to information, the right to participate in public life, freedom of assembly and expression and the right of access to justice. These are discussed further in Chapter 4.

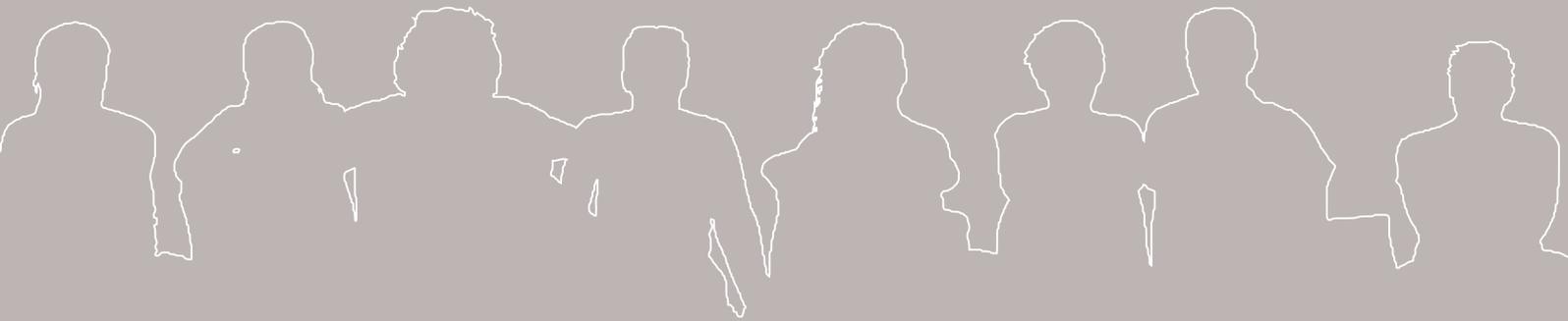
Thus, the economic crisis and the austerity measures adopted as a response can seriously hamper the enjoyment of all categories of human rights: civil, social, economic, political and cultural. States must bear in mind not only their ESC rights obligations in their response to a crisis but must also ensure that their civil and political rights obligations are upheld.

Conclusion

States have a number of obligations arising from the provisions of the ICESCR which have been elaborated by the CESCR, for example in General Comment No. 3. These obligations are not dispensable in time of economic crisis. Obligations such as progressive realisation, maximum available resources, minimum core and non-retrogression should be used to guide policy making in the wake of the crisis.⁹⁷

As has been noted, “it is in periods of extreme hardship, whether of an economic or political nature, that human rights guarantees assume their greatest relevance”.⁹⁸ This includes all human rights: civil and political as well as economic, social and cultural.

In these circumstances, obligations arising from the ICESCR should not be seen as additional burdens on the state which are dispensable but rather as a valuable roadmap for policy makers to assist them in making decisions on resource allocation, particularly in times when such resources are severely constrained.



CHAPTER 3:

BUDGET ANALYSIS TO MONITOR IMPLEMENTATION OF ESC RIGHTS OBLIGATIONS

“[T]he budget - as the instrument that determines the extent of the State’s resources, their allocation and prospective expenditures - is particularly relevant for the realisation of economic, social and cultural rights. The budget is a useful source of information to evaluate which normative commitments are taken seriously by the State, because it provides a demonstration of the State’s preferences, priorities and trade-offs in spending”.

Report of the UN High Commissioner for Human Rights on the Implementation of Economic, Social and Cultural Rights (2009)⁹⁹

Over the past number of years there has been a significant rise in interest in using ESC rights standards to analyse and evaluate budgets, spurred by the global economic crisis.

Budget analysis has been promoted both at an international level, such as by the UN High Commissioner for Human Rights,¹⁰⁰ and at a regional level, such as by the Commissioner for Human Rights of the Council of Europe.¹⁰¹

A number of UN agencies such as UNICEF (on child and social budget analysis and advocacy) and the UN Food and Agriculture Organisation (FAO) (on the right to food budgeting) have started to use and develop experience on budget analysis.¹⁰²



© blackred/iStock

A range of ESC rights based budget analysis frameworks have been developed to monitor the implementation of States Parties’ obligations under the ICESCR. This includes monitoring both the immediate obligations of states and the duty to progressively realise rights in the ICESCR, using maximum available resources as outlined in Chapter 2.

These frameworks can be of guidance to civil society organisations, National Human Rights Institutions (NHRIs) and others in ensuring that a government is making budgetary decisions and allocating resources in line with its obligations under the ICESCR. They are also a useful tool to guide the government in ensuring that ICESCR obligations are upheld when making these decisions. A number of these frameworks are presented in this chapter. This is not an exhaustive list of all frameworks but is designed to provide readers with a list of useful examples which they are encouraged to study further.

Civil society organisations in Ireland have been increasingly engaged in the budgetary process. This chapter also illustrates the nature of the work that has been conducted on this issue in Ireland by civil society organisations, using the legal rights non-governmental organisation FLAC as a case study. It illustrates the impact this work has had and how interested organisations can become involved.

Definition

While there is no single definition for ESC rights based budget analysis, one helpful definition is:

“[T]he analysis of budgetary decisions using a framework premised on substantive [ESC rights] protection set out in international or domestic human rights instruments (for example, in human

rights treaties, constitutions, domestic legislation). Ultimately all such analysis seeks to determine the impact of budgetary decisions on the implementation and enjoyment of [ESC rights]”.¹⁰³

Budget analysis may take different forms, focussing for example on specific rights such as health,¹⁰⁴ housing¹⁰⁵ or education,¹⁰⁶ or the impact of budgetary decisions on the ESC rights of certain groups, for example children.¹⁰⁷

Value

It is important to note that there are certain limitations to budget analysis¹⁰⁸ and no matter how well developed, such analysis cannot answer all of the questions that are relevant when looking at a government programme and whether it is effective. For example, as has been noted, “increased funding may be directed to schools ... but that is no guarantee that the quality of teaching is enhanced. Assessing the teaching requires something other than budget analysis”.¹⁰⁹

However there are a number of benefits to ESC rights based budget analysis including:

- It can be a vital tool in analysing budgetary decisions and in holding the Government to account in terms of its ESC rights obligations;
- ESC rights based budget analysis can provide a year-by-year picture of the Government’s actions and the extent to which it has followed through on earlier promises;
- It provides a means to pinpoint where the Government is failing to comply with its human rights obligations and can help to identify actions the Government could take to better meet its obligations;¹¹⁰
- It can help to identify inadequacies in expenditures or a misdirection of funds comparative to the state’s human rights obligations;¹¹¹
- ESC rights based budget analysis can assist civil society organisations who are attempting to effect policy change;¹¹² and
- ESC rights based budget analysis can build on equality (especially gender) budget analysis, which uses equality and non-discrimination or specific equality schema as the main framework to analyse budget decisions.¹¹³ ESC rights based budgeting provides a framework for analysis taking into account equality and non-discrimination but also other elements of ESC rights such as minimum core obligations, progressive realisation, availability, accessibility, acceptability and quality of goods and services and so forth.¹¹⁴ Scotland is an example of a country where the government has used equality budgeting. This example also shows how governments and civil society can work together in the budgetary process.¹¹⁵

Frameworks

This section outlines a number of budget analysis frameworks along with other guidance which has been developed to assist in monitoring states' ESC rights obligations, including both immediate obligations and the duty to progressively realise the rights in the ICESCR. As noted in the introduction to this chapter, this is not an exhaustive list of all frameworks but is designed to provide readers with a list of useful examples which they may wish to study further.

Name	Developed by	Overview
<p>Dignity Counts: A guide to using budget analysis to advance human rights (2004)¹¹⁶</p>	<p>Fundar, International Budget Partnership, International Human Rights Internship Program</p>	<p>Considers the value of budget analysis and acknowledges limitations. Uses case study on the right to health to show the practical application of ESC rights budget analysis. In the case study it focusses on maximum available resources; progressive realisation; and specific guarantees in Article 12 ICESCR (right to health).</p>
<p>The OPERA Framework: Assessing compliance with the obligation to fulfil economic, social and cultural rights (2012)¹¹⁷</p>	<p>Center for Economic and Social Rights</p>	<p>Provides a practical framework for assessing how public policies comply with the obligation to fulfil ESC rights. The framework outlines a number of relevant human rights standards and principles to take into account when monitoring ESC rights fulfilment and provides guidance on the tools and techniques that may be employed to evaluate them. The framework is based on: Outcomes; Policy Efforts; Resources; Assessment.</p>
<p>Budgeting for Economic and Social Rights: A Human Rights Framework (2010)¹¹⁸</p>	<p>Queens University Belfast</p>	<p>Provides a framework for analysing whether resource allocation and expenditure by the state satisfy the human rights obligations under the ICESCR. This includes progressive realisation; the duty not to take retrogressive measures; and the duty to allocate maximum available resources. It also considers the obligation to respect, protect and fulfil ESC rights. It highlights relevant case law.</p>
<p>Budget Analysis and Economic and Social Rights: A Review of Selected Case Studies and Guidance (2010)¹¹⁹</p>	<p>Queens University Belfast</p>	<p>Reviews a number of existing reports and case studies on ESC rights budget analysis. It reviews 14 key ESC rights budget analysis reports with a view to drawing out lessons from these publications for those seeking to carry out budget analysis work.</p>

Name	Developed by	Overview
Rights or Privileges? Fiscal Commitment to the Rights to Health, Education and Food in Guatemala (2009)¹²¹	Center for Women's Global Leadership	Examines the ways in which governments can access financial resource to fulfil their obligation to use "maximum available resources". According to this report, government revenue, tax policy, development assistance, debt and deficit financing, monetary policy and financial regulation can give an indication of how well the Government has mobilised resources.
Maximum Available Resources & Human Rights (2011)¹²⁰	Center for Economic and Social Rights Central American Institute for Fiscal Studies	Case study analysing the compliance of the Guatemalan State with its obligation to use the maximum available resources to progressively realise ESC rights. A number of indicators are used to measure compliance. Concludes that the unequal levels of enjoyment of ESC rights in Guatemala cannot be attributed exclusively to a lack of state resources but also to the way in which the country's income is generated (including through taxation) and distributed.
Impact Case Study of Civil Society Interventions around the Child Support Grant in South Africa (2010)¹²²	International Budget Project	Case study which illustrates the value that budget analysis can have for civil society organisations seeking to effect policy change. Illustrates how budget analysis impacted upon the expansion and increase in the child support grant scheme in South Africa.

A Human Rights Based Approach to Budgeting in Ireland

In recent years, a number of organisations in Ireland have looked to the Irish budgetary and economic framework in order to identify how best to protect human rights. Following the imposition of austerity measures as a result of the Memoranda of Understanding between the Irish Government and the 'Troika' of the European Commission, European Central Bank (ECB) and International Monetary Fund (IMF), there was an absence of government public statements or documents which examined the austerity measures from a human rights perspective. It appears that little or no attention was or indeed is given to Ireland's ESC rights obligations in budgetary decisions.

(A description of Ireland's budgetary process and cycle is included in the Annex to this report).

The current Government's 2011 Programme for Government stated that it would "open up the Budget process to the full glare of public scrutiny in a way that restores confidence and stability by exposing and cutting failing programmes and pork barrel politics".¹²³

Despite this commitment, while the Department of Finance accepts pre-budget submissions,¹²⁴ only one government department, the Department of Social Protection, has regularly consulted civil society as part of its own departmental budgetary considerations. It does so through a Pre-Budget Forum.¹²⁵ It is also the only department that publishes social impact assessments.¹²⁶ It is unclear what weight is given to submissions made to the Department, how they influence general budget decisions and whether or not important decisions have already been made by the time the Forum takes place. It is also unclear what weight is placed on the content of submissions made to the Department of Finance. As far as can be ascertained, no similar processes take place in any other department.

A recent welcome addition has been an opportunity for civil society organisations to present concerns to the Joint Oireachtas Committee on Finance, Public Expenditure and Reform.¹²⁷ While the Committee publishes the outcome of that consultation and its recommendations,¹²⁸ there is no clarity about the weight given to its recommendations in budgetary decisions. The Committee on Health and Children and the Committee on Education and Social Protection also conduct pre-budget hearings. Again it is unclear what weight is placed on the submissions made at these hearings in budgetary decisions.

Human Rights Based Approach

In adopting human rights based approaches, the aim of states should be to embrace the spirit and intention of human rights law. However, it should be noted that the term 'human rights based approach' does not necessarily fully reflect the obligations of a state under the human rights treaties it has ratified. In particular, it should not be equated to meeting, and is not a substitute for, a state's 'respect, protect and fulfil' obligations which it is required to implement under international human rights law.

Another issue affecting the transparency of the budgetary process is the role of the Economic Management Council, a small sub-group of the Cabinet that includes the Taoiseach, Tánaiste, Minister for Finance and Minister for Public Expenditure and Reform. The Economic Management Council has been criticised by opposition politicians¹²⁹ and Government Ministers¹³⁰ on the ground that it makes important decisions on the budget without the input of Cabinet or the Oireachtas more generally.¹³¹

Since 2009, FLAC¹³² has participated in the pre-budget process and has continually advocated in its pre-budget submissions for the Government to adopt a human rights based approach to budgetary decisions and processes.

FLAC has stated that all proposed budget cuts and measures should be subject to an assessment of their impact on the human rights of the people affected before they are introduced and such assessments should be published.¹³³

In 2011, FLAC published a paper entitled *Realising Rights in a Recession*¹³⁴ along with an information sheet under the same title.¹³⁵ The paper and information sheet analyse relevant human rights law and the ways in which the state could continue to observe its binding commitments to protect and promote human rights in times of economic crisis.

The paper highlighted:

- The duty to respect, protect and promote human rights;
- The obligation to preserve a basic level of subsistence to allow people to live in dignity (the minimum core obligation) noting that where a state seeks to excuse poor performance on meeting human rights obligations, citing lack of resources, it must show that every effort has been made to use all resources at its disposal in trying to satisfy, as a matter of priority, those minimum obligations;
- The concept of progressive realisation which acknowledges that a state may be unable to ensure full realisation of all ESC rights but still has an immediate duty to move towards that goal as quickly as possible, even using resources available from the international community through co-operation and assistance;
- The Government's duty to fully respect the principles of accountability, transparency and the participation of interested groups in the formulation and implementation of policies, programmes and strategies so as to meet obligations under international human rights law; and
- The onus on the state to have consistency and fairness in the application of the law and in providing public services that focus on individuals' needs.

FLAC was also involved in a discussion about fair budgeting using equality principles and contributed to the Equality Budgeting Campaign which was set up to advocate for 'equality proofing' of budgets.

A round table was convened in July 2013 bringing together those thinking about fair budgets either from a human rights or an equality perspective. The roundtable identified a high degree of commonality and also complementary approaches. Based on those discussions, FLAC and the Equality Budgeting Campaign, facilitated by the Public Interest Law Alliance put out a call to NGOs working to achieve social justice to participate in an examination of budgetary allocations by reference to human rights and equality principles. 50 NGOs participated in the exercise, conducting a survey about the level of consideration given to human rights and equality in Budget 2014. Organisations then held a joint meeting on 17 October 2013, two days after the Ministers for Finance and Public Expenditure and Reform had announced the budget.

A set of recommendations were produced from that event as follows:

- The Irish State should introduce pre-budget impact assessments (from a human rights and equality perspective) in all departments where cuts and/or tax increases are proposed. Impact assessments should be made available to the Oireachtas, the

general public and the Economic Management Council to inform budgets to ensure that the most vulnerable in society are affected least adversely by budgetary decisions. Currently only the Department of Social Protection conducts any impact assessment;

- The Irish State should create avenues for increased involvement of civil society in the budgetary process which might take the form of a year round advisory group similar to the one in Scotland. Members of the public and representatives of organisations would participate in such an advisory group with a real chance to directly input into how the budget impacts on marginalised people;
- Each government department should hold a pre-budget forum similar to that which the Department of Social Protection organises for civil society. Recommendations from the forum should be considered for incorporation in the budgetary processes and decisions. Those involved in the consultation should be able to identify how such recommendations were considered.

The organisations involved in the campaign also commented that the lack of transparency surrounding the current budgetary process means it is very difficult for those affected by cuts to public services to engage with decision-makers and to highlight potential oversights or long term negative consequences of short sighted cuts. Using the human rights and equality approach to budgeting would provide the Government with a clearer picture enabling all involved to see who is disproportionately impacted by particular policy measures, and who is experiencing inequality or violations of their human rights as a result of specific measures.

It is anticipated that a similar event will be held in conjunction with the announcement of the Budget for 2015 in October 2014.

This information was kindly provided by FLAC for this paper.

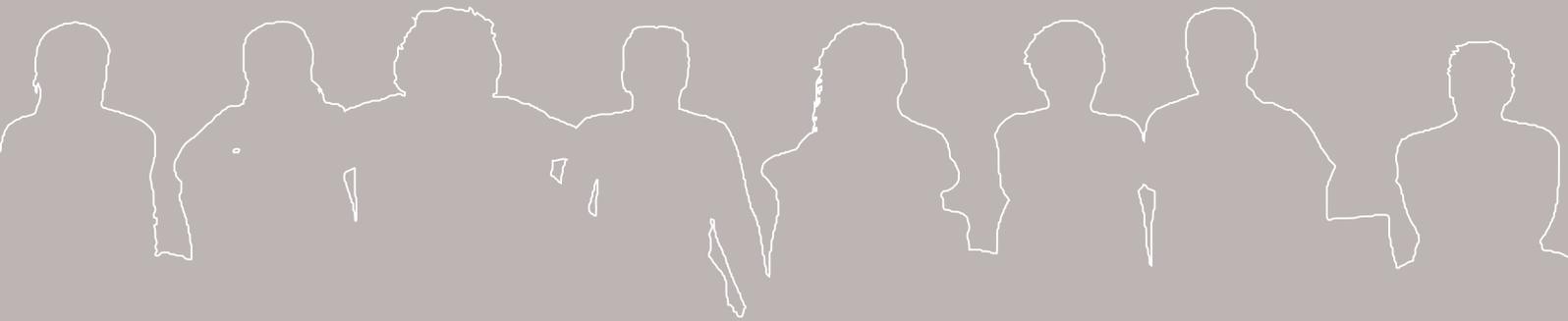
Conclusion

ESC rights based budget analysis can provide a useful tool for civil society organisations in assessing how the Government is meeting its obligations under the ICESCR, including unpacking concepts such as progressive realisation and the duty to use the maximum amount of resources available to the state. This is particularly relevant in the context of the economic crisis.

An increasing number of civil society organisations in Ireland are advocating for the Government to adopt a human rights and equality approach to budgeting, noting that such an approach would provide the Government with a clearer picture of who is or may be disproportionately affected by particular policy measures.

Although the Department of Finance accepts submissions from civil society concerning the budget, at present only the Department of Social Protection actively seeks input from civil society as part of its budget making process and it is unclear to what extent such input is taken into account. Civil society organisations such as FLAC have called for more transparency in the budget making process, including greater participation by civil society, the full Cabinet, legislators and the public. Other measures which should be adopted include pre-budget impact assessments in all relevant government departments.

While no ideal model has yet been developed, a number of states have taken steps at a national or provincial level towards human rights budgeting. This includes, but is not limited to, Scotland, Canada, the US, Brazil and South Africa.¹³⁶ These examples provide guidance in considering how a human rights compliant approach to budgeting could be adopted in Ireland.



CHAPTER 4:

GUIDANCE FROM THE CESSCR, HUMAN RIGHTS BODIES AND INTERNATIONAL EXPERTS

Since the onset of the global economic and financial crises, human rights oversight bodies and procedures have examined the impact of austerity measures on the enjoyment of ESC rights and have further outlined states' ESC rights obligations. This includes work done by: the CESCR; the UN Human Rights Council; the UN Special Rapporteur on Human Rights and Extreme Poverty; the UN Independent Expert on Foreign Debt; and European mechanisms such as the Commissioner for Human Rights of the Council of Europe. Their work provides guidance to states, including Ireland, on the nature of their obligations and how to realise and best protect ESC rights, including when they face economic challenges. Some of the work carried out by these bodies is examined in this chapter.

International level

The UN Human Rights Council

The UN Human Rights Council is an inter-governmental body within the UN system responsible for the promotion and protection of all human rights around the world.

Relatively early into the global financial and economic crises, in 2009, the UN Human Rights Council adopted resolution S-10/1 on the impact of these crises on the universal realisation and enjoyment of human rights.¹³⁷ The resolution expressed “serious concern at the negative impacts of the global economic and financial crises on economic and social development and on the full enjoyment of all human rights in all countries”.¹³⁸

The Council highlighted that:

“[T]he global economic and financial crises do not diminish the responsibility of national authorities and the international community in the realisation of human rights.”¹³⁹

It called on states “to ensure that those at risk of being most affected by the global economic and financial crises are protected in a non-discriminatory way”¹⁴⁰ and in particular to give assistance to the most vulnerable including through the establishment and preservation of social safety nets.¹⁴¹

The Council invited Special Procedures mandate holders (for example, Special Rapporteurs and Independent Experts) and treaty bodies (such as the CESCR) to address any of the impacts of the crises and to make recommendations. An explanation of these mandate holders and treaty bodies and their roles is included below.

The Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR) is the leading UN entity on human rights. It has a mandate provided by the UN General Assembly to promote and protect all human rights for all people.

The OHCHR has stressed the need for governments not to introduce measures that impact upon the human rights of the population, particularly the most vulnerable, and to ensure that austerity measures are implemented in accordance with the principles of equality and non-discrimination.¹⁴² In its 2013 *Report on austerity measures and economic and social rights*¹⁴³ the OHCHR highlighted that the imposition of austerity measures exacerbated the impact of the global financial crisis on “the ability of individuals to exercise their human rights, and that of States to fulfil their obligations to protect those rights”.¹⁴⁴

It noted:

“This is particularly true for the most vulnerable and marginalised groups in society, including women, children, minorities, migrants and the poor, who suffer from decreasing access to work and social welfare programmes, and reduced affordability of food, housing, water, medical care and other basic necessities.”¹⁴⁵

Why a human rights based approach?

The OHCHR in its report noted that a human rights based response to the crises “supports the protection of economic and social rights through investing in social and economic programmes, while simultaneously stimulating the economy. Such measures also help to build national stability by reducing the likelihood of political unrest... and strengthens the legitimacy of governments”.

Office of the UN High Commissioner for Human Rights, Report on austerity measures and economic and social rights (2013), p 9.

What does a human rights based approach require?

As noted by the OHCHR:

“A human rights-based response to the economic crisis would call for accountability in the public and private sectors, social investment, improved job training and job creation policies, and a sound social security system. This approach derives from the right of all persons to an adequate standard of living, as articulated in the Universal Declaration of Human Rights, international human rights treaties and the International Labour Organisation (ILO) conventions. Policy responses to [the] economic crisis should be formulated and implemented within the parameters of international human rights law.”

(These parameters are outlined in Chapter 2 of this AI Ireland paper).

Office of the UN High Commissioner for Human Rights, Report on austerity measures and economic and social rights (2013), p 9.

The OHCHR proposed six criteria for measuring the human rights compliance of austerity measures:

- The existence of a compelling state interest, namely that the austerity measures were necessary for the protection of the totality of the rights provided for in the ICESCR, and not simply justified by reference to fiscal discipline or savings;
- The necessity, reasonableness, temporariness and proportionality of the austerity measures;
- Exhaustion of alternative and less restrictive measures;
- Non-discriminatory nature of the measures adopted, whether introduced or applied in a way that is directly or indirectly discriminatory in intent or in effect;
- Protection of a minimum core content of the rights, especially for disadvantaged and marginalised groups; and
- Genuine participation of affected groups and individuals, in examining proposed austerity measures and the alternatives, and influencing decision-making on those measures.¹⁴⁶

These criteria reflect the safeguards outlined by other human rights mechanisms such as the CESCR discussed in Chapter 2, to ensure that measures taken by states in response to the economic and financial crises have minimal impact on the protection of human rights.

Both the impact of the economic and financial crises on human rights and the framework for policy responses to the crises have been further delineated by other human rights bodies and Special Procedures.

The UN Committee on Economic, Social and Cultural Rights

As outlined earlier, the CESCR is mandated to examine periodic reports submitted by states on the implementation of their ESC rights obligations and thereupon to make concluding observations and recommendations to states.¹⁴⁷ The CESCR also issues General Comments on particular themes or rights as protected in the ICESCR - for example on the rights to health, housing, education, work, food, water, social security and cultural rights¹⁴⁸ and on the overarching obligations on states arising under the ICESCR, such as General Comment No. 3 outlined in Chapter 2.¹⁴⁹

The meaning of ESC rights is therefore not limited to the wording of the provisions in the ICESCR itself but is given further definition in the General Comments of the CESCR, and in the CESCR's consideration of states' periodic reports. As the CESCR begins to hear complaints under the Optional Protocol to the ICESCR, its decisions will provide further details on the content of ICESCR rights and obligations.

The CESCR most recently issued a letter to States Parties in 2012 regarding the protection of ESC rights in the context of the global financial and economic crises. This is discussed further in Chapter 2.

In a number of its General Comments the CESCR has also outlined the obligations of States Parties, including with regard to debt, recession and budgetary decisions. Selected examples are outlined below. Chapter 2 of this paper should also be referred to.

General Comments

General Comment No. 2: International technical assistance measures (Article 22, ICESCR) (1990)

- The CESCR expressed its particular concern about the adverse impact of debt burden on states and the relevant adjustment measures on the enjoyment of ESC rights. It accepted that adjustment programmes may be unavoidable and often involve a large element of austerity. However, the CESCR stressed that in “such circumstances endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent”.¹⁵⁰

The CESCR stated that:

“States parties to the [ICESCR] ... should thus make a particular effort to ensure that **such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment.** Such an approach, which is sometimes referred to as ‘adjustment with a human face’ or as promoting “the human dimension of development” requires that **the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment**”.¹⁵¹

The CESCR also stated that “international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this may point to the need for major debt relief initiatives”.¹⁵²

As mentioned earlier, the CESCR has issued a number of General Comments on specific rights in the ICESCR, such as the rights to health and housing. These General Comments also address States Parties’ obligations in the context of an economic crisis.

The obligations of States Parties relating to the right to adequate housing and the right to health are outlined further in Chapter 5 of AI Ireland’s paper, *Bringing ESC Rights Home: the case for legal protection of economic, social and cultural rights in Ireland*,¹⁵³ and should be read in conjunction with the outline of the relevant General Comments below. It should also be noted that these General Comments are used as illustrative examples only and there are many other General Comments that the CESCR has issued which are relevant, such as on education, work, food, water, social security and cultural rights, as noted earlier.¹⁵⁴

General Comment No. 4: The right to adequate housing (Article 11(1), ICESCR) (1991)

- In the context of the right to adequate housing, the CESCR has stressed that priority must be given to social groups living in unfavourable conditions and that legislation and policies should not be designed to benefit already advantaged groups at the expense of others. The CESCR emphasised that the obligations under the ICESCR “continue to apply and are perhaps even more pertinent during times of economic contraction”.¹⁵⁵

- With regard to international financial assistance, the CESCR noted that States Parties should ensure that a substantial amount of financing is designated to the creation of conditions resulting in a higher number of people being adequately housed. The CESCR stressed that “[i]nternational financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing”.¹⁵⁶

General Comment No. 14: The right to the highest attainable standard of health (Article 12, ICESCR) (2000)

- In General Comment No. 14, the CESCR made clear that, as with all of the rights in the ICESCR, there is a strong presumption that any retrogressive measures taken with regard to the right to health are not permissible. In accordance with General Comment No. 3, as outlined in Chapter 2, the CESCR noted that in order to justify any retrogressive measures on the right to health, the state “has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by references to the totality of the rights provided for in the [ICESCR] in the context of the full use of the State party’s maximum available resources”.¹⁵⁷
- The CESCR has also stressed that **actors such as the IMF “should cooperate effectively with States parties ... in relation to the implementation of the right to health at the national level”¹⁵⁸ and that international financial institutions such as the World Bank and the IMF “should pay greater attention to the protection of the right to health in their lending policies, credit agreements and structural adjustment programmes”.**¹⁵⁹ In General Comment No. 14, the CESCR noted that when considering States Parties’ periodic reports and their ability to meet their obligations on the right to health under the ICESCR, it would take into full consideration the effects of the assistance provided by other actors.¹⁶⁰

States Parties’ reports

As with its General Comments, the CESCR has provided guidance and advice to States Parties on how to safeguard adherence to their obligations under the ICESCR in recessionary times and when adopting austerity measures.

In its examination of Spain’s periodic report in 2012, the CESCR expressed its concern that the levels of effective protection of ESC rights had been reduced due to the adoption of austerity measures.¹⁶¹ In particular the CESCR was concerned at the disproportionate impact this had on the enjoyment of rights by marginalised and disadvantaged individuals and groups, including unemployed adults and young people, older persons, women, children, persons with disabilities, migrants and asylum seekers.

The CESCR recommended “that the State party ensure that all austerity measures adopted reflect the minimum core content of all the Covenant rights and that it take all appropriate measures to protect the core content under any circumstances, especially for disadvantaged and marginalised individuals and groups”.¹⁶²

The CESCR has elaborated on the meaning of ‘minimum core content’ in relation to specific rights in its General Comments. For example, in General Comment No. 14 on the right to health, the CESCR described the minimum core content of the right to health as requiring states to ensure provision of essential primary healthcare; access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups; and the provision of essential drugs as from time to time defined under the WHO Action Programme on Essential Drugs.¹⁶³

Another example is the minimum core of the right to social security, outlined in Chapter 2 of this paper.

With regard to the obligation of non-retrogression as outlined in Chapter 2, the CESCR also urged Spain “to review the reforms adopted in the context of the current economic and financial crisis to ensure that all **the austerity measures introduced uphold the level of the protection attained in the realm of economic, social and cultural rights** and that, in all cases, such measures are **temporary** and **proportionate** and do not negatively impinge on economic, social and cultural rights”.¹⁶⁴

The CESCR will review Ireland’s third periodic report under the ICESCR in June 2015. The issues that have arisen in the review of other State Parties’ reports regarding austerity measures and responses to the financial and economic crises are likely also to come under the scrutiny of the CESCR when examining Ireland’s report.¹⁶⁵

UN Special Procedures

The Special Procedures of the UN Human Rights Council are independent human rights experts, usually called Special Rapporteurs and Independent Experts, with mandates to report and advise on human rights from a thematic or country-specific perspective. The UN has appointed a number of UN Special Rapporteurs and Independent Experts who conduct missions to states and produce reports on particular ESC rights issues.

Over the past number of years these Special Rapporteurs and Independent Experts have increasingly considered the impact of the financial and economic crises on human rights and have outlined the obligations of states in their response to these crises.

In particular, the Special Rapporteur on the Question of Human Rights and Extreme Poverty (formally known as Independent Expert) (hereafter Independent Expert/Special Rapporteur on Human Rights and Extreme Poverty), has emphasised the importance of a human rights based approach to recovery from these crises.¹⁶⁶ The work of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, particularly Economic, Social and Cultural Rights (hereafter Independent Expert on Foreign Debt) has complemented the work of the Special Rapporteur.

Special Rapporteur on Human Rights and Extreme Poverty

In her report to the UN Human Rights Council in 2011, the then UN Independent Expert on Human Rights and Extreme Poverty identified a number of areas where the global economic and

financial crises threaten the enjoyment of ESC rights. In particular, she highlighted concerns about: the erosion of social protection systems, at a time when those systems are particularly important to support individuals and households at risk of economic hardship; reductions in the public sector to decrease wage bills, and the consequent impact on the delivery of services; the implementation of regressive tax measures both in terms of income generation for the state and the unequal impact of regressive measures on those already experiencing financial hardship (contrary to the obligation of non-discrimination); and the limiting of food subsidies, concurrent with the escalation in commodity prices.

She made a range of recommendations to address the impact of the crises and to ensure a human rights based response from states, categorised as follows:

- Ensuring a social protection floor for all, namely a basic set of rights and transfers that enable and empowers all members of society to have access to essential services;
- Promoting employment and decent work, including sustainable, productive and decent work for all sectors of the population;
- Ensuring gender-sensitive policies, to address both the severe impact of the crisis on women and the need to ensure the inclusion of women in the recovery;
- Implementation of socially responsible taxation policies, to harness resources in a way that balances the tax contributions of different sectors and portions of the population;
- Enhancement of regulation to protect individuals from abuse by private actors, including actors in the global financial and monetary systems;
- Strengthening of state institutional and technical capacity, to develop evidence-based and human rights based decision making;
- Improving collection of data and poverty monitoring systems, to predict crises and understand impact;
- Increasing participation and creating a national dialogue, including structures and pathways for consultation with civil society and other actors;
- Ensuring an environmentally sustainable recovery to address climate change and environmental degradation and mitigate against future crises; and
- Enhancement of international cooperation and assistance, including sustainable Overseas Development Assistance (ODA).¹⁶⁷

This broad analysis has been complemented by the findings of the office holder in her country visits to a number of states during the crisis, including Ireland.¹⁶⁸

Mission to Ireland

In 2011, the then UN Independent Expert on Human Rights and Extreme Poverty¹⁶⁹ conducted a mission to Ireland and met with a number of civil society organisations and government officials. Following her mission the Independent Expert issued a report raising a number of concerns and making a series of **recommendations to the Irish State on how to implement a human rights based**

approach to recovery in Ireland. In her report, the Independent Expert reiterated that **“Ireland’s human rights obligations apply even during times of economic hardship, and that recovery measures must not disproportionately impact the poorest segments of society”**.¹⁷⁰

The then Independent Expert stressed that:

“While human rights do not dictate exactly what policy and budgetary measures States should pursue, such measures must comply with State’s international human rights obligations. Human rights are not a policy option, dispensable during times of economic hardship. It is vital, therefore, that **Ireland immediately undertakes a human rights review of all budgetary and recovery policies** and ensures that it complies with the following fundamental human rights principles.”¹⁷¹

These principles are:

- **Using the maximum available resources** (including taxation measures – discussed further below);
- **Ensuring minimum essential levels of ESC rights** (this obliges the state to make sure that any programmes or policies necessary for delivering essential services, such as healthcare and social assistance, are protected to the greatest extent possible from reduced expenditure);
- **Avoiding deliberately retrogressive measures** (such as drastic budgetary reductions to Government departments, the community and voluntary sector);
- **Ensuring non-discrimination and equality** (the state must ensure that policies do not exacerbate the situation of vulnerable groups such as single mothers, children, Travellers, persons with disabilities, migrants, asylum seekers and homeless people, and should take positive measures to assist these groups in an effort to put them on an equal footing with others in society); and
- **Allowing for participation, transparency and accountability** (this includes the utilisation, support and strengthening of permanent structures and pathways for consultations with individuals, civil society, trade unions, community organisations, grassroots movements and academics).¹⁷²

Job creation

The Independent Expert, in her report of her 2011 mission to Ireland, also emphasised that employment and job creation is an integral part of the economic recovery. She stressed the need for a human rights based approach to job creation including the obligation on the Irish State to guarantee non-discrimination and equality, for example by ensuring equal access to training programmes for vulnerable groups. The State must also ensure that employment activation policies do not place a larger burden on some individuals or groups such as persons with disabilities or single parents. The State must also take account of other considerations such as gender concerns, by ensuring the provision of child care and after-school facilities to help ensure greater participation of women in the labour market. Any employment activation policies must be participatory, allowing individuals to provide feedback and input. Information on such policies must also be widely available and accessible.¹⁷³ Accessibility of information is a key element of a human rights based approach.

Recommendations of the then Independent Expert on Human Rights and Extreme Poverty to Ireland

In her 2011 report, the Independent Expert made a range of recommendations to Ireland, including specific recommendations outlined in the various sections of her report, and a number of overarching recommendations. Her recommendations to Ireland included:

- a) Strengthen the legal and institutional framework by giving domestic legal effect to Ireland's international human rights obligations, and ratifying and incorporating into domestic law international treaties to which it is not yet party;
- b) Review its Programme for Government and National Recovery to ensure that it complies with human rights principles, particularly the obligation to use the maximum resources available and to not take retrogressive measures in the protection of economic, social and cultural rights, and consider reversing those measures which disproportionately impact on the most vulnerable and excluded, particularly reductions in social protection payments and funding to public services; and
- c) Strengthen the social protection system, infrastructure and social services to ensure the full enjoyment of all economic, social and cultural rights of the population, and remove barriers that prevent the most vulnerable segments of society from accessing their entitlements.”¹⁷⁴

It appears that the Irish Government did not issue an official response to the recommendations and did not respond to a country-specific questionnaire sent by the Independent Expert seeking information about Ireland's progress and challenges in the implementation of recommendations. She noted that states' failure to provide such follow-up information “was one of the major obstacles encountered in assessing the developments following the country visits”.¹⁷⁵

Independent Expert on Foreign Debt mission to Greece

In April 2013, the Independent Expert on Foreign Debt conducted a mission to Greece. The Greek experience of the economic crisis, the austerity measures adopted and the role of the international actors administering the foreign debt package (European Commission, ECB and IMF) were examined by the Independent Expert. In his initial findings, the Independent Expert expressed concerns over the severe impact of the implementation of austerity measures and structural reforms on basic social services and the enjoyment of human rights by the Greek people. He noted that austerity measures had resulted in significant social costs to the population including high unemployment, homelessness, poverty and inequality.

The Independent Expert called on “the Government and the Troika to adopt a human rights-based approach to the design and implementation of fiscal consolidation and reform policies in Greece to ensure that these policies are consistent with the obligations for the promotion of economic, social

and cultural rights that the country has assumed through the ratification of core international human rights instruments”.¹⁷⁶

In his final report the Independent Expert expressed concern over the disproportionate impact of the adjustment programme on the most vulnerable sectors of society, including those living in poverty, older persons, pensioners, women, children, people with disabilities and immigrants.¹⁷⁷ The Independent Expert also addressed the impact of the response to the crisis on rights such as work, adequate housing, social security, health and education.¹⁷⁸ He made a number of recommendations including that the Government “[c]onduct an independent, transparent and participatory audit of its debt in order to determine the origins and to identify and to hold to account those found responsible for the debt”.¹⁷⁹

This recommendation of the Independent Expert should also be taken into account in Ireland, in the establishment of any inquiry into factors that contributed to the economic crisis in Ireland. Any such inquiry should be independent, transparent and participatory.

Fiscal and in particular taxation policy

It has been noted that “[t]axation is a rarely explored topic on the human rights agenda, yet it is one of the most important policy instruments governments can deploy to generate the resources needed to realise the full range of human rights”.¹⁸⁰

Increasingly it is recognised that taxation has a critical role to play in the state’s ability to meet its human rights obligations. With regard to ESC rights for example this includes the ability of a state to generate maximum available resources. The CESCR and other treaty bodies such as the UN Committee on the Rights of the Child have raised concerns that inadequate generation of resources including through taxation has a negative impact on the realisation of ESC rights.¹⁸¹

Similar observations have been made by the Rapporteur of the Council of Europe Committee on Social Affairs, Health and Sustainable Development who noted:

“Future national action should also include measures aimed at increasing public revenues by taxing higher income categories and property wealth more strongly, by shoring up the tax base and by enhancing tax collection, the efficiency of the tax administration and the fight against tax fraud, tax evasion and tax havens, corruption and the underground economy.”¹⁸²

In relation to civil and political rights too, UN Human Rights Council Special Procedures have highlighted that inadequate generation of revenue can jeopardise the enjoyment of these rights. For example under-resourcing of the judicial or law enforcement system impacts upon the effective administration of justice.¹⁸³

The then Special Rapporteur on Human Rights and Extreme Poverty has carried out a specific programme of work on the impact of fiscal and in particular tax policy, which she presented to the Human Rights Council in 2014.¹⁸⁴ Civil society organisations are also increasingly considering the linkages between tax policy and human rights.¹⁸⁵

In her report to the Human Rights Council, **the then Special Rapporteur describes fiscal and especially tax policies as “a major determinant in the enjoyment of human rights”**. The Special Rapporteur focussed on the revenue raising element of fiscal policy, in particular taxation. She assesses how revenue raising policies and practices can be strengthened by taking a human rights based approach and makes a number of recommendations for policies that are based on human rights standards.

As pointed out in Chapter 1 of this paper, human rights law does not prescribe the specific policies that states should adopt in order to meet their obligations and the state has a certain discretion in the policies it adopts. **However, the state does not enjoy unfettered discretion and certain obligations must be met including: ensuring minimum essential levels of rights; using the maximum available resources to ensure progressive realisation; non-retrogression; the obligation to ensure equality and non-discrimination; participation; and accountability and transparency,** outlined below and elaborated further in the Special Rapporteur’s report.

What do these obligations mean with regard to fiscal policy?

Minimum essential levels of rights in the context of fiscal policy

Even when a state is subject to severe resource constraints, such as in times of economic crisis, it must show that it has made every effort to use all of the resources at its disposal to ensure, as a matter of priority, minimum essential levels of ESC rights. Such resources, according to the Special Rapporteur, include “resources that could potentially be collected through taxation, or tackling tax evasion and other illicit financial flows”.¹⁸⁶

Maximum available resources and progressive realisation in the context of fiscal policy

The meaning of maximum available resources and progressive realisation has been discussed throughout this paper. These obligations have been applied by the Special Rapporteur on Human Rights and Extreme Poverty in the specific context of fiscal policy.

In her most recent report, the Special Rapporteur noted that the maximum available resources obligation should guide the state in decision making around the generation, mobilisation and allocation of resources. The duty of progressive realisation requires the state to make effective use of its available resources.

According to the Special Rapporteur this includes:

“Potential resources that could be raised through reasonable efforts, such as taxation measures and international assistance and cooperation. Other areas are also critical for mobilising resources, including debt and deficit financing, monetary policy and financial regulation”.¹⁸⁷

Non-retrogression in the context of fiscal policy

As outlined earlier in this paper, states should not take any retrogressive measures in their delivery of ESC rights. While some retrogressive measures may be permissible in times of economic crisis,

such measures must be fully justified by the state. The compatibility with the ICESCR of any retrogressive steps, such as austerity measures, would depend in part on whether the state has sought any revenue-raising alternatives before introducing cuts in areas important for the enjoyment of ESC rights.¹⁸⁸

Equality and non-discrimination in the context of fiscal policy

It has been noted that wealth transfer and redistribution through taxation has the ability to redress systematic discrimination and to help achieve substantive equality.¹⁸⁹ While it is not a human rights body, it is interesting to note that the IMF has observed that progressive tax systems, particularly direct taxes, are one of the most important tools for governments to address income inequality.¹⁹⁰

Further, as noted by the Special Rapporteur on Human Rights and Extreme Poverty:

“Personal income tax is one of the most progressive and important kinds of tax in this regard. Indirect taxes, such as those based on consumption (for example value-added or sales taxes) are typically regressive, because they generally constitute a larger proportion of the income of people living in poverty”.¹⁹¹ Others, including the UN Special Rapporteur on the Right to Food, have also expressed their concern about the regressive nature of indirect taxes¹⁹² and research has shown the negative impact that indirect taxes can have on people in or on the verge of poverty.¹⁹³

Participation, transparency and accountability in the context of fiscal policy

With regard to participation, transparency and accountability the Special Rapporteur on Human Rights and Extreme Poverty in her most recent report stated:

“Fiscal policies should be subjected to the scrutiny of the population during the design, implementation and evaluation stages, with the various interests transparently identified. This will require capacity-building and fostering fiscal literacy in the population. The population should have access to all relevant information in an accessible and understandable format, and inclusive mechanisms should be put in place to ensure that they are actively engaged in devising the most appropriate policy options.”¹⁹⁴

Recommendations

In her most recent report, the Special Rapporteur on Human Rights and Extreme Poverty makes a range of recommendations regarding taxation and human rights.¹⁹⁵ A number of these are listed here. However, readers are encouraged to study the full report of the Special Rapporteur which also considers and makes recommendations on issues such as: corporation tax; tackling tax abuse; widening the tax base; ensuring the sustainability of natural resources; enhancing international assistance and cooperation; and broadening the contributions of the financial sector. It is beyond the scope of this paper to elaborate on all of these issues.

Recommendations of the Special Rapporteur on Human Rights and Extreme Poverty regarding fiscal policy include:

- Increase tax revenue in a manner compatible with human rights obligations of non-discrimination and equality, and increase the allocation of revenues collected to budget areas that contribute to the enjoyment of human rights;
- Invest financial resources and political will in strengthening national tax authorities, ensuring that they have technical and budgetary autonomy and that their staff is professionalised;
- Ensure that taxes do not have a regressive impact;
- Give careful consideration to the income tax threshold and ensure that people below or near the poverty line are not driven deeper into poverty by tax policies;
- Carry out human rights assessments of fiscal policy on a periodic basis, with broad public participation, including analysis of distributional consequences and tax burden borne by different income sectors and disadvantaged groups;
- Ensure people have access to relevant data and information on fiscal policy and government revenues, including from the corporate sector, and include such information under right to information laws;
- Take measures to build capacity of people to understand fiscal policy options, and establish inclusive mechanisms to ensure that they are actively engaged in devising the most appropriate policy options; and
- Ensure that there are accessible channels for accountability and remedy for any negative human rights impact of fiscal policy. This includes strengthening the capacity of the judicial system and National Human Rights Institutions to address fiscal policy.

Obligations of international economic bodies and financial institutions

While it is beyond the scope of this paper to consider in detail the obligations of non-state actors, such obligations must be highlighted, particularly in the context of the global financial and economic crises and any financing packages provided to Ireland and other states.

As noted by the Independent Expert on Foreign Debt, “[i]t is increasingly accepted that non-State actors, including international financial institutions, have obligations to ensure that their policies and activities respect international human rights standards”.¹⁹⁶ This, as noted in the *UN Guiding principles on foreign debt and human rights*, “implies a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights”.¹⁹⁷ The then UN Secretary General’s Special Representative on business and human rights¹⁹⁸ and others¹⁹⁹ have made similar observations.

The then Special Rapporteur on Human Rights and Extreme Poverty has also highlighted the role of international economic bodies and financial institutions such as the IMF, EU, the World Bank, ECB and the European Bank for Reconstruction and Development. The Special Rapporteur has recommended that these bodies take into account human rights obligations and impact when setting conditions and policies in the area of fiscal policy, in particular promoting progressive taxation. She also recommended that these bodies “[u]tilise their significant technical capacity to help Governments to broaden their fiscal spaces and redistributive capacities in accordance with their

human rights obligations” and to “[e]nsure that, when elaborating policy rankings, loan conditions or technical advice, these are not in conflict with the human rights obligations of the host State”.²⁰⁰

The Independent Expert on Foreign Debt has also called on international lenders “[w]ith particular reference to the IMF, to ensure that debt sustainability assessments take into consideration the other demands on the Government’s available resources, particularly those required for social investments and establishment of the conditions for the full realisation of all human rights, particularly economic, social and cultural rights”.²⁰¹ The Commissioner for Human Rights of the Council of Europe has made similar recommendations.²⁰²

Thus, not only does the state have an obligation to ensure that it adheres to its human rights obligations when adopting measures in response to the economic crisis, but international financial institutions and economic bodies also have certain obligations in this regard.

Guiding principles on foreign debt and human rights

In this context, and of particular relevance in Ireland, the Independent Expert on Foreign Debt has produced the *Guiding principles on foreign debt and human rights* with the overriding aim of assisting “States and all relevant actors including private and public, national and international financial institutions, bilateral lenders and organised groups of bondholders in the conduct of their respective activities and pursuit of their respective interests relating to external debt”.²⁰³ The *Guiding principles* are geared at assisting both lenders and borrowers to strike an appropriate balance between the obligations of states arising from external debt arrangements and their obligations under international human rights law, such as the obligation to progressively realise ESC rights. The *Guiding principles* are based on the primacy of human rights law.

The Independent Expert on Foreign Debt notes that:

“Any foreign debt strategy must be designed not to hamper the improvement of conditions guaranteeing the enjoyment of human rights and must be directed, inter alia, to ensuring the debtor States achieve an adequate level of growth to meet their social and economic needs and their development requirements, as well as fulfilment of their human rights obligations.”²⁰⁴

It is beyond the scope of this paper to consider the *Guiding principles* in detail and readers are encouraged to study these principles further, particularly considering their applicability in Ireland at present.²⁰⁵

Regional level

Regional human rights mechanisms have provided a similar oversight function to that of the CESCR and Special Procedures.

The Commissioner for Human Rights of the Council of Europe

The Commissioner for Human Rights of the Council of Europe has expressed his concerns about the impact on the enjoyment of human rights of the current global financial crisis and the

subsequent austerity programmes adopted by various European governments.²⁰⁶ This has been a feature of the Commissioner's thematic, country-visit and awareness-raising work, where he has examined the impact both on ESC rights and on civil and political rights, and the way in which the crisis has placed new strains on the protection of rights,



© karnizz/Shutterstock

particularly for minorities. He has echoed the concern of the Special Rapporteur on Human Rights and Extreme Poverty about the erosion of social protection provisions, particularly for vulnerable groups including: children; the unemployed; single parents; Roma; people with disabilities; women who are victims of violence; older persons with inadequate pensions; migrants and others. The impact on these groups has been documented from the Commissioner's country visits including Portugal²⁰⁷ and Spain²⁰⁸ and he has urged governments to ensure that the human rights of vulnerable groups are better respected in the context of austerity measures.²⁰⁹

In his report, *Safeguarding human rights in times of economic crisis*,²¹⁰ the Commissioner outlines the impact of austerity measures on a range of ESC rights such as the rights to work, social security, housing, food, education, health and water. The Commissioner uses the example of fees for domestic water being introduced in Ireland as a condition for international assistance from the Troika as a setback in peoples' right to water.²¹¹

In his report the Commissioner also highlights the impact that the crisis has had on civil and political rights. This demonstrates the interrelatedness of all human rights as outlined in Chapter 2. In particular the Commissioner notes the impact of the crises on the rights of access to information and to participate in public life with governments speedily drawing up austerity policies without participation or dialogue. He also highlights infringements of the rights to freedom of assembly and freedom of expression particularly in responses to demonstrations in countries such as Spain, Portugal and Greece.²¹² The Commissioner also outlines how austerity measures have impacted access to justice. Specifically he notes cuts to legal aid in 2011 and 2012 in Germany, Ireland and the UK.²¹³

The role of national human rights structures

In his report, *Safeguarding human rights in times of economic crisis*, the Commissioner for Human Rights of the Council of Europe places a particular emphasis on the role that national human rights structures (NHRs) can play in reacting to the consequences of the crisis,

monitoring the impacts of the crisis on a case-by-case basis and analysing the human rights effects of austerity. Such structures include Human Rights Commissions, Ombudsmen and other equality bodies. He proposes a number of ways in which NHRs can deepen their engagement in addressing the human rights consequences of the economic crisis.

These include:

- Through their advisory function, NHRs can assess laws, policies, practices and budgets against human rights and equality norms, helping to ensure greater transparency and accountability and to translate international norms into the national context;
- NHRs and their European networks can create platforms for dialogue between civil society, government and international organisations in order to raise awareness about the implications of proposed fiscal policies or legislative reforms and helping to construct alternatives. This helps to facilitate meaningful public participation. NHRs could also conduct human rights and equality screenings of budgets and fiscal policies and act as broker between the relevant stakeholders in the carrying out of human rights impact assessments of policies; and
- NHRs can help to ensure accountability and remedies for violations of human rights that stem from the crisis and the policy responses to it through for example their quasi-judicial and investigatory functions.

Challenges faced by NHRs

Cuts imposed as part of states' austerity programmes have had a significant impact on the ability of NHRs to monitor the human rights consequences of austerity measures. Such measures have therefore had a cyclical effect by impacting human rights and at the same time the ability of NHRs to monitor this impact.

The Commissioner expresses his concern about the limitations facing NHRs, including through budget cuts and compromise of their independence.

He stresses the importance of a government consulting with NHRs in the early stages of policy and law making and the need to ensure that NHRs have a broad mandate in line with the Paris Principles, including the power to address ESC rights.

He notes: "Currently NHRs are often forced to do more with less under budgetary pressure. Demand for NHRs services has increased, while many institutions have simultaneously experienced budget and staff cuts, the closure of regional offices or mergers into less-focused structures."

The Commissioner expressly references budget and staff cuts to Ireland's NHRs and stresses the need to maintain stable resource allocation during the crisis and recommends that any moratorium on recruitment in the public sector should not apply to these bodies.

Commissioner for Human Rights, Council of Europe, Issue Paper, Safeguarding human rights in times of economic crisis (Council of Europe, 2013), pp 53-54.

The Commissioner's recommendations echo the observations made by other international experts. His recommendations to states include, but are not limited, to:

- Institutionalise transparency, participation and accountability through the economic and social policy cycle;
- Conduct systematic human rights and equality impact assessments of social and economic policies and budgets;
- Ensure social protection floors for all;
- Regulate the financial sector in the interest of human rights;
- Work to realise human rights through economic assistance and cooperation;
- Engage and support an active civil society;
- Integrate a human rights based approach into to work of public administrations at all levels including in the formulation of economic policies and budgeting;
- Engage and empower national human rights structures in the context of the economic crisis; and
- Ratify human rights instruments on ESC rights including the OP ICESCR.²¹⁴

The Parliamentary Assembly of the Council of Europe

The Parliamentary Assembly of the Council of Europe has also expressed extreme concern about the “disastrous impact that this financial crisis and its economic consequences are having on the living conditions of the citizens of Europe and of the world” and the failure of the November 2008 G20 plans to make any reference to “protecting the social and economic rights of citizens in a period of crisis”.²¹⁵ In 2012, the Parliamentary Assembly also expressed its concern that “the restrictive approaches currently pursued, predominantly based on budgetary cuts in social expenditure, may not reach the objective of consolidating public budgets, but risk further deepening the crisis and undermining social rights as they mainly affect lower income classes and the most vulnerable categories of the population”.²¹⁶

While most of the recommendations adopted by the Parliamentary Assembly addressed reform of the global financial system, they also urged “constant monitoring of the social impact and the human dimension of the financial and economic crisis in the Council of Europe member states”.²¹⁷

The European Parliament

At a European Union level, the European Parliament recently adopted a resolution on the impact of the financial and economic crisis on human rights²¹⁸ with a specific focus on the obligations of governments in responding to that crisis.

This included:

- The response to the crisis must include internationally coordinated multilateral cooperation at both the regional and inter-regional levels with a strong human rights based approach at its core;

- It is the duty of governments to respect, protect and fulfil human rights, including economic and social rights, at all times;
- The existing gap between legal recognition and political enforcement of rights is to be deplored;
- While the global economic crisis poses a severe threat to the fulfilment of ESC rights, there is no justification for states, whatever their level of income, to compromise on their obligation to respect fundamental human rights;
- Governments have, at all times, an obligation to ensure ‘minimum essential levels’ of the social and economic rights necessary for living in dignity; and
- Governments should place the interests of the most vulnerable sections of the population at the centre of policy responses by using a human rights framework in the decision making process.²¹⁹

Moreover, the **European Committee of Social Rights** has stated that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the European Social Charter. Hence, governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most”.²²⁰

Reports by civil society organisations

A number of civil society organisations have echoed the concerns and recommendations of international and regional human rights experts and bodies. Two international non-governmental organisations, The Center for Economic and Social Rights (CESR) and Oxfam have carried out case studies on Ireland and are discussed here as illustrative examples. However many more organisations have conducted work on the impact of the economic crisis in Ireland and the response that the Government should adopt.²²¹

Similar to the findings of UN Special Procedures and others (outlined above), the CESR in its 2012 study on Ireland concluded that “the government is not taking all necessary steps to comply with its international obligations to respect, protect and fulfil economic, social and cultural rights. In particular, fiscal policies (both budget and tax-related) do not appear to be in line with the obligation to devote the maximum available resources to fulfil economic, social and cultural rights progressively, and to guard against retrogression and ensure the rights of the most vulnerable, even in times of scarcity”.²²² The CESR stressed that ‘availability of resources’ under the ICESCR does not only refer to how the Government allocates its resources but also how it generates them. This includes taxation in particular, as highlighted by the work of the Special Rapporteur on Human Rights and Extreme Poverty and others, discussed above. Similar observations have been made by Oxfam International in its 2013 case study on Ireland.²²³ The CESR²²⁴ and Oxfam²²⁵ in their studies on Ireland have echoed the UN Special Procedures (including Special Rapporteurs and Independent Experts as discussed above) in noting the often

regressive nature of overreliance on indirect taxation on consumption rather than direct income taxes.

The CESR’s case study analysed government policy in the context of the economic crisis and concluded that austerity measures have severely reduced the enjoyment of a range of ESC rights rather than safeguarding these rights as a priority. The CESR identified “a political context in which international human rights treaties ratified by Ireland have been regarded as of scant relevance to economic and social policy-making”.²²⁶

The CESR emphasised the need for the Irish Government to “urgently integrate the human rights principles of non-discrimination, equality, non-retrogression, progressive realization, transparency, participation and accountability into its economic recovery measures”.²²⁷

It stressed the need for fairer and more rights based policy making processes and meaningful participation in the budget making process. While it acknowledged the Pre-Budget Forum held by the Department of Social Protection it noted that there had been concerns raised that the voices of vulnerable communities had not been adequately taken into account in recent years, as the drive for austerity was given priority.²²⁸ Oxfam also reiterated the need for greater public participation in the processes of budgeting and resource allocation.²²⁹ In particular it underscored the need to strengthen access to good quality information on administrative and budget processes.²³⁰

The CESR made a range of recommendations including that the Irish Government conduct a human rights impact assessment of its economic recovery plans and policies as a basis for their revision.²³¹ This echoes the recommendation made by the Commissioner for Human Rights of the Council of Europe (discussed above). Both CESR²³² and Oxfam²³³ made a number of recommendations regarding taxation including that Ireland introduce progressive and non-discriminatory tax reforms to mobilise maximum available resources. The CESR²³⁴ and Oxfam²³⁵ both stressed the need to ensure accountability and transparency in the financial sector and, as highlighted by the Independent Expert on Foreign Debt (discussed above), CESCR also emphasised the obligation of creditors and international institutions to ensure that policy agreements comply with Ireland’s ESC rights obligations.²³⁶

Conclusion

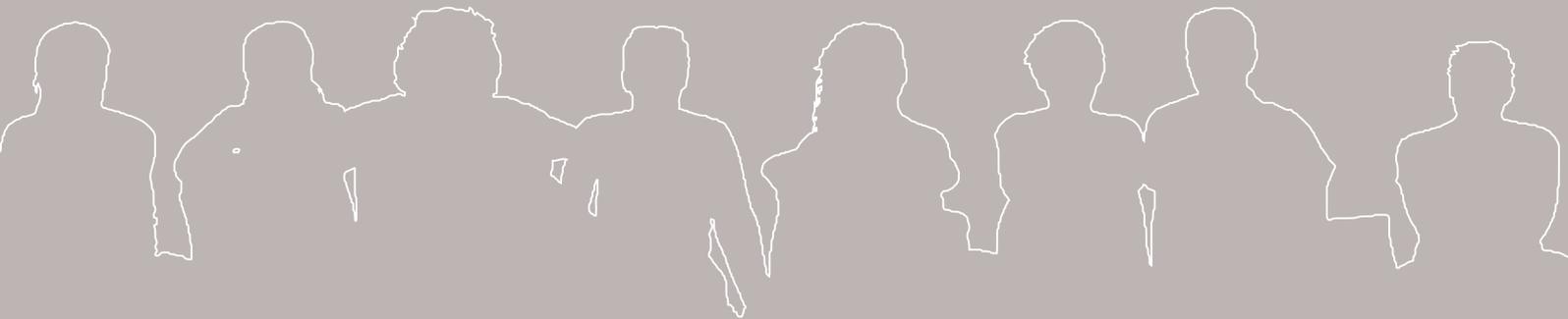
As explained earlier in this paper, human rights obligations do not diminish in times of economic and financial crises. Under the ICESCR the state has an obligation to ensure that law and policy responses to these crises are in line with international human rights law. This includes budgetary measures.

The work of international and regional human rights bodies and experts provides guidance to states on the nature of their ESC rights obligations and how to realise and best protect these rights in such times.

A human rights based approach requires the state to: ensure the use of maximum available resources, including through appropriate taxation measures; protect the minimum essential levels of ESC rights; avoid deliberately retrogressive measures in the enjoyment of ESC rights; ensure non-discrimination and equality in its responses; guarantee meaningful participation, transparency and accountability in the formulation of law and policy.

A human rights based approach can guide the Government to achieve fairer and more transparent and participatory law and policy making in response to the crises and in adopting recovery measures, helping to ensure more equal outcomes for all.

As international experts have pointed out, not only must states uphold their human rights obligations but international economic bodies and financial institutions also have certain duties that should be adhered to. For example, the imposition of certain policies and loan conditions on the state should not jeopardise its ability to meet its human rights obligations. Other actors such as National Human Rights Institutions have a critical role to play in responding to the crises. They should be engaged and empowered (including through adequate funding and independence) to react to the crises and monitor impact.



CHAPTER 5:

THE LEGAL ENFORCEMENT OF ESC RIGHTS IN THE CONTEXT OF THE ECONOMIC CRISIS

Around the world, courts and other adjudicatory bodies at both a national and regional level have adjudicated on ESC rights in the context of budgets and the responses of states to the economic crisis. These cases have helped to further outline the obligations of states with regard to ESC rights and how these obligations apply in their own domestic context.

AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of Economic and Social Rights in Ireland*, addresses in detail the legal enforceability of ESC rights and readers are referred to this paper for further information. AI Ireland calls for ESC rights to be given greater legal protection in Ireland. In February 2014, the government-established Constitutional Convention recommended that ESC rights be given greater constitutional protection in Ireland, and that such rights should be enforceable by the Irish courts.

As seen increasingly in other jurisdictions, legally enforceable ESC rights provide a vital accountability mechanism for the actions or inaction of states. This includes the measures adopted by states in response to the economic crisis. Moreover, access to justice is a human right in itself but is also an essential tool in tackling inequality and poverty at a systemic and individual level.²³⁷

This chapter gives a non-exhaustive overview of some of the case law that has arisen out of the responses of some states to the crisis.

National level

Latvia and Romania

*Case No. 2009-43-01*²³⁸ involved a constitutional challenge to the Latvian State pension law²³⁹ by a group of over 9,000 pensioners. The relevant law had been enacted in 2009 as a response to the country's economic crisis. It reduced the pensions of current pensioners by 10 per cent and future pensioners by 70 per cent. Despite it being a temporary law it did not provide for repayment of the reduced amount when the economy stabilised. The Latvian Government stated that it had certain obligations with international creditors including the EU and IMF. The Court did not accept loan conditions as a valid justification for the law to reduce pensions.

The Court found that the Government had not considered alternative and less restrictive measures, it had not allowed for an adequate transition period before the new law came into effect and it had no plan for compensation of the reduced pensions in the future. The Court therefore found the law to be unconstitutional. It relied on Article 109 of the Constitution (social security) and Article 9 of the ICESCR (social security) to find that an individuals' right to a pension forms part of the right to social security. The Court also held that minimum essential levels of rights must be guaranteed regardless of resource constraints and special protection must be afforded to vulnerable groups such as pensioners. The Court stated that the international creditors had not specifically ordered a reduction in pensions but if such conditions had been imposed, these could not replace constitutional rights.

In a similar case in 2010, the Constitutional Court of Romania overturned a proposed cut to pensions of 15 per cent, requiring the Government to identify other means to satisfy its IMF

obligations.²⁴⁰ However, in other cases the Court has found austerity measures relating to raising the pension age and inflation-tied pensions to be constitutional.²⁴¹

Regarding the Latvian and Romanian cases in which those Governments' austerity measures were found to be unconstitutional, it has been noted that the cases touch upon "the continuing demands of the rule of law, in particular the continuing duty of our legislators to consider fully the range of alternatives and the proportionality of interference".²⁴²

Hungary

The Hungarian Constitution includes a number of social rights. In the 1990s, the Hungarian Government sought to introduce a number of radical changes to the social security system as a result of poor economic growth, high public debt, and budget and current account deficits. The IMF had threatened to cease assistance to Hungary if cuts to social benefits were not introduced.²⁴³ Reform measures included: tax increases; a move to a needs-based system for certain social benefits; university fees; and increases to the subsidised mortgage rate.²⁴⁴ Legislation containing these reform measures was challenged before the Hungarian Constitutional Court. The Court based its 1995 decision in this case on the principles of legal certainty and property rights. Regarding legal certainty the Court stressed this principle as being "the most conceptual element of the rule of law" and its importance in ensuring the stability of the welfare system.²⁴⁵ The Court noted that any interference with legal certainty would have to be measured against the impact on fundamental rights.²⁴⁶ The Court focussed on the legitimate expectations or acquired social benefits of a person. It stated that reducing a benefit without any transition period, or changing it from a form of insurance to a form of assistance, "brings about an essential change in the legal position in the sense that the person concerned falls into a weaker category of protection of legitimate expectations (the protection of property ceases) and this amounts to an intervention in fundamental rights".²⁴⁷ The Court stated that where the welfare system includes an 'insurance' element any changes must be considered in the context of the right to property. Regarding the right to social security, the Court noted that "social benefits may not be 'reduced below a minimum level' required for the right to social security".²⁴⁸

The Court focussed on the proportionality of the reform measures in determining whether these changes were justified in the public interest. It considered the fact that no transitional period had been provided for, which had a particular impact on family and maternal benefits.²⁴⁹ The Court found the measures to be unconstitutional as they lacked proportionality.²⁵⁰

By way of comparison, the proportionality test has been applied by the Irish courts in a number of cases relating to private property, discussed further in Chapter 4 of AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.

Portugal

The Constitution of Portugal enshrines a wide range of ESC rights²⁵¹ and there have been numerous constitutional cases in Portugal where the Constitutional Court has dealt with concepts such as non-retrogression and minimum core obligations.²⁵² The Court has also ruled on a number

of cases relating to austerity measures adopted by the Portuguese State in response to the economic crisis and Portugal's bailout programme. The court has struck down a number of budgetary cuts introduced by the Government.²⁵³ These cases are considered in more detail in Chapter 7 of AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*. They show that it is possible for courts to adjudicate at a domestic level on the application of ESC rights obligations.

South Africa

The South African Constitution gives extensive protection to ESC rights, including but not limited to health, housing and social security. Much of the language used is modelled on the ICESCR, including the use of concepts such as progressive realisation and available resources. The Constitutional Court of South Africa has adopted a reasonableness approach when adjudicating ESC rights claims.²⁵⁴ This approach is discussed in detail in Chapter 3 of AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.

Recently, the High Court of South Africa has adjudicated on an ESC rights claim which concerned budget allocations. The Court took an innovative approach in seeking to balance the ESC rights of the persons concerned with the Government's claim of resource constraints. The *Basic Education for All (BEFA) and Others v Minister for Basic Education and Others*²⁵⁵ case centred around the failure of the Department of Basic Education (DBE) to provide textbooks in the province of Limpopo. The right to basic education is protected in Section 29 of the South African Constitution.²⁵⁶ Despite earlier cases on the matter, many students had still not been provided with the necessary textbooks to participate in education.

The Court, in finding a violation of the right to basic education, stressed the fact that books are a basic and important component of education and in society more broadly. The DBE made the case that it had requested the money necessary to meet their textbook requirements from the fiscal authorities but had been granted less. In the Court's opinion the main obstacle to the delivery of the required books was the fact that the Parliament may not allocate sufficient money for this to be achieved. Given the fact that this had happened before, the Court found that it could happen again. It therefore directed the political heads of the relevant departments to inform the applicants in the case as well as the South African Human Rights Commission of the amounts sought in order to provide for the relevant textbooks and the amount actually awarded.

As has been observed, "[e]ssentially, the court has ordered the DBE and the Parliament to account for its budget allocations".²⁵⁷

It has been noted that in this case, the Court, by ordering the departments to report back, whilst at the same time refraining from ordering a specific sum to be spent by the State, "may have struck upon a remedy that provides a unique ability to intervene in the budgetary process without overstepping the separation of powers doctrine".²⁵⁸ It remains to be seen what impact this judgment will have and whether it will be appealed. However, such judgments have the potential of ensuring greater transparency and accountability in the budget making process.

Regional level

Both the European Committee of Social Rights (ECSR) and the European Court of Human Rights (ECtHR) have ruled on the austerity measures adopted by Greece.

European Committee of Social Rights

The Right to Social Security

On 7 December 2012, the ECSR adopted five decisions relating to Greek pension plans. The Greek Government had adopted a range of measures which included: reductions in primary pensions; reductions in auxiliary pensions; reductions in bonuses; levies from pensions; suspensions or reductions of pensions for pensioners with an occupation; and reductions of private sector pensioners' social solidarity benefit.

The complainant trade union in the case argued that these measures amounted to a violation of Article 12 (social security) of the European Social Charter, as they did not respect the principle of proportionality. The complainant claimed that these measures were not necessary for the recovery of public funds and were not the most suitable measures to achieve the intended aims. It also argued that when taken together, the measures were "likely to affect the ability of many elderly people to lead a decent life".²⁵⁹ The complainant maintained that other measures (including certain taxation measures) could have been adopted which would have not impacted the lives of the pensioners in such a negative manner.²⁶⁰

The Government argued that the legislation was introduced as a result of the Greek State's economic and social situation and that the measures were a "part of the programme of fiscal and social measures, the purpose of which is to enhance the competitiveness of the Greek economy and the operation of the labour market".²⁶¹ It argued that the relevant programme adopted by the Government laid down a set of structural measures and a timetable for their realisation which had to be observed as "a prerequisite for the loan instalments, as provided by the agreement with the Troika".²⁶²

In its consideration of the complaint, the ECSR took into account the relevant jurisprudence from the ECtHR relating to pensions²⁶³ and resolutions of the Parliamentary Assembly of the Council of Europe on austerity.²⁶⁴ It concluded that while some of the relevant Acts did not amount to a violation of the European Social Charter themselves, the cumulative effect of the measures caused a "significant degradation of the standard of living and the living conditions of many of the pensioners concerned".²⁶⁵ The ECSR found that the cumulative effect of these measures amounted to a violation of article 12(3) of the European Social Charter which states that:

"With a view to ensuring the effective exercise of the right to social security, the Parties undertake: to endeavour to raise progressively the system of social security to a higher level."²⁶⁶

The ECSR also concluded:

“[T]hat the Government has not established, as is required by Article 12(3), that efforts have been made to maintain a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population, as has been observed by various international organisations”.²⁶⁷

Further, while taking into account the situation in Greece created by the economic crisis and the fact that the Government had to make urgent decisions, the ECSR found “that the Government has not conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups in society. Neither has it discussed the available studies with the organisations concerned, despite the fact that they represent the interests of many of the groups most affected by the measures at issue”.²⁶⁸

The conclusion of the ECSR emphasises the importance of transparent, evidence based and participatory decision making by governments when making budgetary decisions, particularly in times of economic crisis.

European Court of Human Rights

The ECtHR, though generally adopting a more conservative approach, has handed down a number of judgments on cases relevant to the economic crisis. These cases have related to Article 1 of Protocol 1 of the ECHR which protects property rights. As has been observed by former Judge and Vice-President of the ECtHR, Françoise Tulkens, there have also been a number of cases where the “the right to housing as an interest protected by the [ECHR] emerges

very clearly from the case-law concerning the limits that may be imposed by property rights”.²⁶⁹ Other cases have involved claims of inhuman and degrading treatment.²⁷⁰



©stocknshares/iStock

The Right to Private Property

In the case of *Koufaki and Adedy v Greece*,²⁷¹ the Greek Government had introduced a number of severe budgetary measures aimed at reducing public spending. This included cuts to the salaries and pensions of public sector workers and the curtailment of benefits such as holiday pay and bonuses. These measures were permanent and of a retrospective nature and applied to all public servants. The applicants claimed that their rights under Article 1 Protocol 1 had been breached.

The ECtHR considered the wide margin of appreciation enjoyed by states when formulating economic policy and the public interest consideration which underpinned the introduction of such measures. It found that the cuts were not excessive and did not affect the livelihoods of the applicants to such an extent that it would threaten their wellbeing. The ECtHR declared the application inadmissible.

In contrast, in the case of *N.K.M. v Hungary*,²⁷² the ECtHR, despite its usual approach of granting a wide margin of appreciation to states regarding taxation, held that the applicant was required to endure an excessive and individual burden and that her rights under Article 1 Protocol 1 had been breached. In this case the applicant was a civil servant who had been dismissed after 30 years of service. She was entitled to a severance pay on dismissal. Shortly before the applicant was dismissed, a new law was introduced according to which a 98 per cent tax was imposed on severance pay above a certain amount. The ECtHR found that the applicant had to endure considerable loss of income at a time when she was being made redundant, which was at odds with the aim of a severance package. It also observed that the legislation was introduced very close to the applicant's dismissal, giving her little chance to adjust to her difficult financial situation which she could not have foreseen. The ECtHR was also critical of the fact that the new law only applied to a certain group of public servants and highlighted that good government was dependent on trust between the governed and the governor.²⁷³

While the ECHR does not explicitly protect the vast majority ESC rights (some limited exceptions exist regarding property and the right to education), commentators have noted that the ECtHR has recognised the social implications of civil and political rights.²⁷⁴

As far back as 1979 in the case of *Airey v Ireland*,²⁷⁵ the ECtHR affirmed that an interpretation of the ECHR may extend into the sphere of social and economic rights and that there is no water-tight division between civil and political right and economic and social rights. Relevant cases are considered in the Chapter 1 of AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*. Other cases have emerged confirming the interdependence of ESC rights and civil and political rights. These cases are particularly relevant to the economic crisis and resultant social crisis in Ireland and beyond.

The Right to Housing

In the landmark judgment in *James and Others v the United Kingdom*, the ECtHR stated that:

“Eliminating what are judged to be social injustices is an example of the functions of a democratic legislature. More especially, modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces.”²⁷⁶

In another case relating to a challenge to rent reduction measures as violating Article 1 Protocol 1, the ECtHR stated that “such laws are especially called for and usual in the field of housing, which in our modern societies is a central concern of social and economic policies”.²⁷⁷

The case of *Hutten-Czapska v Poland*²⁷⁸ concerned rent control measures in the context of a housing crisis. The ECtHR took into account the right to property, its economic and social dimension and the obligations of the Polish State regarding the social rights of people.

It stated:

“[T]he respondent State must above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community - including the availability of sufficient accommodation for the less well-off in accordance with the principles of the protection of property rights under the Convention”.²⁷⁹

These cases show that despite there not being specific protection of the right to housing in the ECHR, the ECtHR, whilst somewhat conservative, does in certain instances engage in a balancing exercise when it comes to private property rights and the issue of housing requirements.

The right to property is protected in the Irish Constitution but the right to housing is not. While AI Ireland advocates for ESC rights to be given explicit protection in the Constitution, in the interim a broader approach to the right to property could be adopted, taking into account the Irish State’s obligations regarding the right to adequate housing as protected in international human rights law.

Inhuman and Degrading Treatment

There have been a number of cases where the ECtHR has indicated that social hardship and deprivation could amount to inhuman and degrading treatment under Article 3 of the ECHR. It should be noted however that a high threshold exists for treatment to be deemed inhuman and degrading under the ECHR.

In *Larioshina v Russia*,²⁸⁰ the ECtHR stated that while it was for the national authorities to determine the level of social assistance benefits, “a complaint about a wholly insufficient amount of pension and other social benefits may, in principle, raise an issue under Article 3 of the [ECHR] which prohibits inhuman and degrading treatment”.²⁸¹

The case of *M.S.S. v Belgium and Greece*²⁸² concerned an asylum seeker transferred to Greece by Belgium who had been living on the streets for a number of months without any resources or access to sanitation facilities. No action had been taken by the authorities. The ECtHR reiterated what it had said in a previous case, that it has not excluded “the possibility that the responsibility of the State may be engaged [under Article 3] in respect of treatment where an applicant, who was wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity”.²⁸³ The ECtHR reiterated the absolute nature of Article 3, irrespective of the difficult economic circumstances faced by Greece.

It stated:

“The Court does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis. It is particularly aware of the difficulties involved in the reception of migrants and asylum seekers on their arrival at major international airports and the disproportionate number of asylum seekers when compared to the capacities of some of these States. However, having regard to the absolute character of Article 3, that cannot absolve a State of its obligations under that provision.”²⁸⁴

The Court held that:

“[T]he Greek authorities have not had due regard to the applicant’s vulnerability as an asylum seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs.”²⁸⁵

It considered that the applicant had been a victim of humiliating treatment showing a lack of respect for his dignity. It found that his living conditions together with prolonged uncertainty and the complete lack of prospects of his situation improving amounted to a violation of Article 3.²⁸⁶

This case again emphasises the interdependence of civil, political, economic, social and cultural rights and that the impacts of the economic crisis are not limited to one or other category of rights. However, a high threshold exists in order for treatment to be considered inhuman and degrading and in many cases this threshold may not be reached. The cases above also show that states’ human rights obligations do not diminish despite the difficult economic situation that they may find themselves in.

International

The OP ICESCR was adopted by the UN General Assembly in 2008 and entered into force on 5 May 2013, following its ratification by 10 UN Member States.

The OP ICESCR is a legal instrument which creates additional mechanisms for the CESCR to monitor the compliance of states with the ICESCR. This includes a communications procedure which allows individuals and groups of individuals to

send a communication to the CESCR if they believe that their rights under the ICESCR have been violated and if they have exhausted all remedies in their own country.



© xenotar/iStock

Ireland signed the OP ICESCR on 23 March 2014 but has not yet ratified it. This means that the OP ICESCR is not yet enforceable in Ireland.

The CESCR has yet to consider its first communication. However, it is likely that communications may involve ESC rights concerns emerging from the economic crisis.

Further information on the OP ICESCR is available in AI Ireland's paper, *Bringing ESC Rights Home: Ireland and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*.

Conclusion

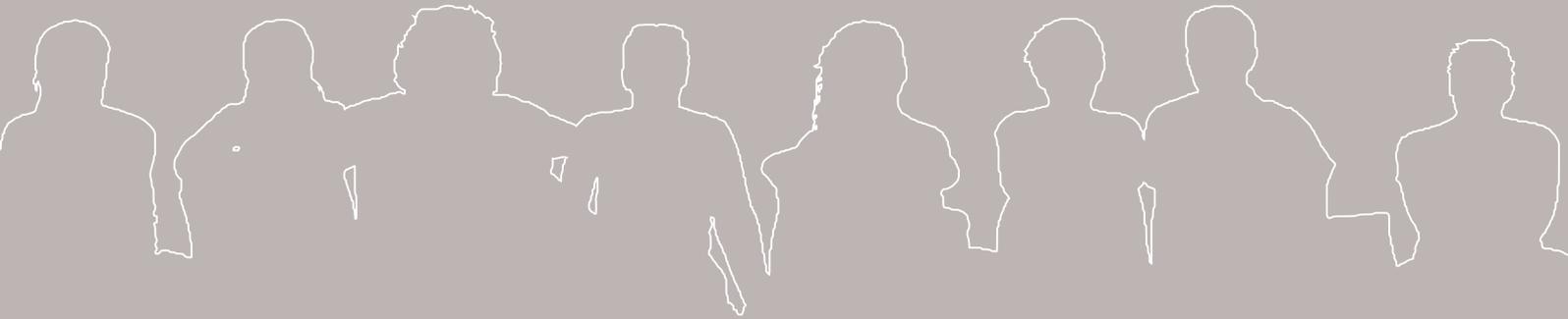
As seen from case law in other states, legally enforceable ESC rights can provide important checks and balances in economic decision making, requiring the Government to balance economic considerations with its human rights obligations. The case of *Basic Education for All (BEFA) and Others v Minister for Basic Education and Others* in South Africa provides a good example of how the judiciary can play a role in the budgetary process whilst at the same time upholding the separation of powers.

AI Ireland calls on the Government to strengthen the legal protection of ESC rights in Ireland, both in legislation and in the Irish Constitution. As a first step the Government should accept the recommendation of the Constitutional Convention that ESC rights be given enhanced protection in the Irish Constitution.

At a regional level, Ireland is bound by the provisions of the European Social Charter and the ECHR. Both bodies have adjudicated on cases relating to the responses of states to the economic crisis. They have highlighted the need for transparent, participatory and evidenced based decision making as well as the obligation to protect the most vulnerable. Despite the wide margin of appreciation granted to states by the ECtHR in economic decision making, decisions must not place an excessive burden on individuals. The ECtHR has established that severe social hardship and deprivation may amount to a violation of Article 3 and states' obligations under this article cannot be qualified regardless of the economic difficulties they face. However a high threshold exists under Article 3. Indirect protection of elements of ESC rights through the provisions of the ECHR should not be considered as an alternative to advancing the legal protection of ESC rights.

At an international level, the OP ICESCR provides an important remedy for individuals or groups of individuals whose ESC rights have not been upheld and who have exhausted all available domestic remedies.

AI Ireland calls on the Irish State to ratify the OP ICESCR. The first step towards ratification should be the commencement of an inter-departmental consultation process, led by the Department of Foreign Affairs and Trade.



CHAPTER 6:

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

At both an international and regional level Ireland is legally bound by treaties protecting ESC rights. **The ESC rights obligations of the Irish State do not diminish in times of economic challenge. If anything, ensuring adherence to ESC rights becomes all the more important when difficult decisions must be made about the allocation of resources.**

However, there is little evidence that the ESC rights obligations of the State have guided Irish policy makers in the wake of the economic crisis. Such obligations include: evidence based, transparent, non-discriminatory and participatory decision making; using the maximum available resources available to the State; and ensuring accountability. The Irish State should also refrain from adopting any measures that lead to retrogression in the enjoyment of ESC rights. Should retrogressive measures be unavoidable, these must be fully justified by the State.

The ESC rights obligations of the State should not be seen as a burden but rather as providing valuable guidance for the Government in making budgetary decisions. A rights based approach to budgeting can help to safeguard the rights of the most vulnerable and to achieve fairer, more equal outcomes for all.

Civil society organisations play an important accountability role when it comes to the allocation of resources by the State. Budget analysis is a vital tool to assess how the Government is performing with regard to its ESC rights obligations. Over the past number of years, spurred by the economic crisis, there has been a rise in the interest of civil society organisations and academics in using ESC rights standards to analyse and evaluate budgets. ESC rights based budget analyses has been promoted at both an international and at a regional level. A number of frameworks have been developed to conduct such analysis and civil society organisations are playing a key accountability role in using these frameworks to show where states are failing to meet their human rights obligations.

In Ireland, organisations such as FLAC are increasingly engaging in the budgetary process. While some progress has been made to facilitate participation by civil society in this process, concerns have been expressed about the lack of transparency when it comes to decisions around the budget in Ireland. Questions also remain as to whether the participation which is facilitated by the Government is meaningful, with little evidence of concerns being taken into account. The need for human rights impact assessments to be carried out by all departments has also been flagged.



© Print Bureau

Ample guidance has been provided by international experts and bodies on how states can ensure protection of ESC rights in times of economic crisis and how these rights can guide the way in any recovery process.

In 2011, the then Independent Expert on Human Rights and Extreme Poverty made specific recommendations to Ireland in this regard. There is no indication that these recommendations have been taken into account by the Government.

AI Ireland advocates for greater legal protection to be given to ESC rights in Ireland. This includes giving explicit protection to these rights in the Irish Constitution. Case law from other jurisdictions shows how the legal protection of ESC rights can protect against the negative impacts of economic policies. The example from South Africa discussed above shows that courts can engage in the budgetary process whilst respecting the separation of powers. The case law outlined above also shows that states' human rights obligations are not dispensable in times of economic difficulty and that the economic crisis and states' responses thereto, have the potential of impacting all human rights, civil, political, economic, social and cultural.

ESC rights have largely been excluded from the political and legal systems in Ireland, despite the Irish State being bound by the ICESCR for almost 25 years. The economic crisis has had devastating impacts on the enjoyment of ESC rights in Ireland, particularly for the most vulnerable in society. Economic decisions and the State's duties to international financial institutions must be balanced with its human rights obligations. ESC rights present a framework for the Government which can help to ensure that such a balance is achieved and that recovery efforts are premised on progressively realising the ESC rights of the whole population.

The following recommendations are intended to outline how a human rights based approach could be adopted and greater protection be afforded to ESC rights in the budgetary process in Ireland. A number of recommendations also refer to strengthening the legal protection of ESC rights in Ireland, a primary objective of AI.

RECOMMENDATIONS

State

- The Irish State must ensure that there are adequate remedies available for people when their ESC rights are violated. This includes access to remedies at a national and international level.
- Regarding remedies at an international level, the State should ratify the OP ICESCR and other instruments protecting ESC rights, such as the Optional Protocol to the Convention on the Rights of Persons with Disabilities (UNCRPD), following ratification of the UNCRPD.
- The Constitution should be updated to give greater protection to ESC rights. The Government should accept the Constitutional Convention's recommendation that greater protection be given to ESC rights in the Constitution. It should engage robustly on the issue of constitutional ESC rights and should ensure full transparency and clear timelines in any measures adopted to deliberate further on how best to implement this recommendation.
- ESC rights related legislation should be framed in human rights language, guided by the provisions of the ICESCR, the General Comments of the CESCR and the work of other relevant UN procedures.

- The Government should ensure access to information on budget and fiscal policy, promoting fiscal literacy among the public and ensuring a full understanding of the budgetary process.
- Recognising that civil society organisations play an important role in ensuring budgetary accountability, the Government should create avenues for their increased involvement in the budgetary process possibly taking the form of a year round advisory group similar to that in Scotland. Members of the public and representatives of organisations would participate in such an advisory group with a genuine opportunity to directly input into how the budget impacts on marginalised people.
- A specific budget line should be created to finance measures that achieve transparency and participation, for example the above mentioned advisory group.
- The Government should ensure and demonstrate that in any budgetary decisions it is making full use of the State's maximum available resources. This includes resources which could be mobilised by the State for example via taxation. In this regard the Government should ensure progressive as opposed to regressive taxation measures.²⁸⁷
- Any proposed budgetary measures should be tested against the provisions of the ICESCR. This includes ensuring that measures identified are non-discriminatory and do not disproportionately impact the most vulnerable.
- The Government should establish, and regularly review, a minimum core for all human rights including social welfare, healthcare, education and an adequate standard of living which includes housing. At the very least this minimum core of ESC rights should be guaranteed to all people, with a view to progressively realising these rights.
- The Government should undertake that there will be no retrogression in the level of protection of ESC rights in Ireland. Should retrogressive measures be deemed unavoidable these must be fully justified by an analysis of the totality of resources available to the Irish State (including those available in the State and through international assistance and co-operation). Even where retrogressive measures are justified, these should not impact upon the minimum core of ESC rights.
- The Government should ensure and demonstrate that in the design and implementation of budgetary measures, it is actually progressively realising ESC rights in terms of measurable and meaningful outcomes.
- Any inquiry into factors that contributed to the economic crisis in Ireland should be independent, transparent and participatory.²⁸⁸

Government Departments

- All Government departments – particularly when budget cuts and/or tax increases are proposed - should carry out pre-budget impact assessments from a human rights and equality

perspective. Impact assessments should be made available to the Oireachtas, the general public and the Economic Management Council to inform budgets and to ensure that the most vulnerable in society are affected least adversely by budgetary decisions.

- Each Government department should hold a pre-budget forum similar to that which the Department of Social Protection organises for civil society. Recommendations from the forum should be considered for incorporation in the budgetary process and those involved in the consultation should be able to identify how recommendations were considered.
- Government departments should ensure that state resources are effectively used by clearly identifying outcomes to be achieved from expenditure, tracking expenditure from departmental vote to programmatic spend, and having effective reporting procedures in place on expenditure against allocation and agreed outcomes.
- All civil servants should engage in human rights training to ensure a full understanding of human rights and the State's obligations.
- There should be increased dialogue on human rights between Government departments. This would help to ensure a full understanding of the nature of duties arising from human rights law, including ESC rights obligations which must be taken into account in economic decision making.

Oireachtas

- While the opportunity to present submissions to some Oireachtas Committees is a welcome addition to the budgetary process, clarity should be provided about the weight given to submissions in budgetary decisions.
- The establishment of an Oireachtas Committee on Human Rights with the mandate to assess all proposed legislative and other measures for human rights compliance should be considered.

The Courts and Legal Profession

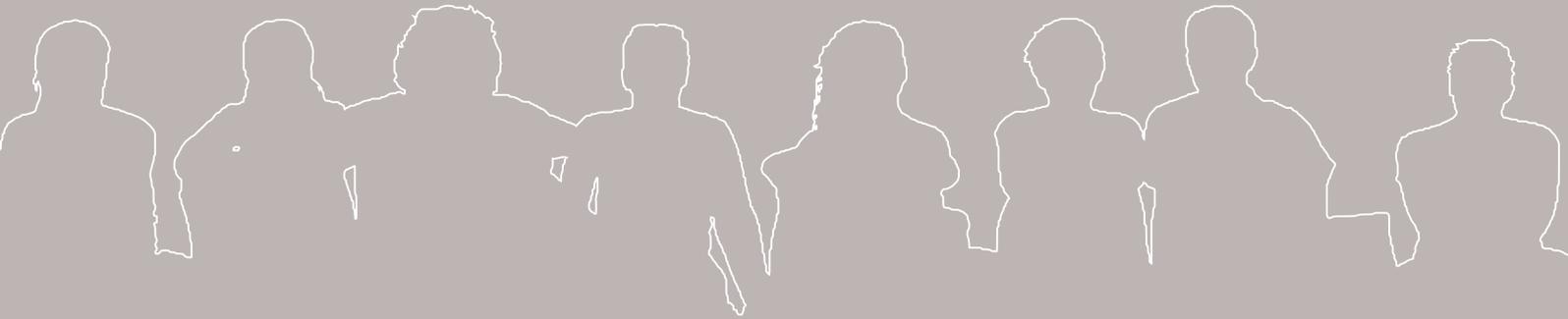
- One of the functions of the Judicial Council once established on a statutory basis, will include the preparation and dissemination of information for use by judges.²⁸⁹ This should include information on the nature of ESC rights and their interpretation to date. Another function of the Council will be to develop and manage schemes for the education and training of assistance to judges.²⁹⁰ This should include training on human rights and in particular ESC rights, in order to encourage the judiciary to refer to and draw guidance from international human rights law more frequently.
- The Executive should ensure the availability of information for judges and lawyers, on the nature of ESC rights and their interpretation to date in and outside Ireland.

Irish Human Rights and Equality Commission

- The Irish Human Rights and Equality Commission must be given sufficient funding and an appropriate mandate to allow it to effectively promote and protect ESC rights. This includes the ability to analyse and monitor the impacts of the economic crisis on human rights, using appropriate human rights based indicators and benchmarks.

Political Parties

- Political Parties should include a commitment to the full realisation of ESC rights in their election manifestos and take them into account in the formulation of policy and responses to the Government.



ANNEX:

IRISH BUDGETARY PROCESS AND CYCLE

ANNEX:

IRISH BUDGETARY PROCESS AND CYCLE:

- November: The European Commission publishes the Annual Growth Survey (AGS). The AGS presents the Commission's view of EU policy priorities for the next year. Member States are invited to take them into account when designing their economic policies for the coming year.
- By end of April: The Irish Government submits the Stability Programme Update (SPU)²⁹¹ and National Reform Programme (NRP)²⁹² to the European Commission and Dáil.
- The SPU is the official macro-economic and fiscal forecast for Ireland to 2018 and is the first update of the Government's macro-economic and fiscal projections, including medium term budget strategy.
- The NRP outlines structural reforms.
- The SPU and NRP are requirements of the EU's 'European Semester'.²⁹³
- The SPU and NRP are discussed at the Oireachtas Committee on Finance, Public Expenditure and Reform.
- May: The European Commission responds to the SPU and NRP with draft country specific binding recommendations including budgetary recommendations.²⁹⁴
- June: The Council of the EU²⁹⁵ agrees on final country specific recommendations which are endorsed by the European Council.²⁹⁶
- June: The Oireachtas Committee on Finance, Public Expenditure and Reform invites submissions from interested groups and individuals on the forthcoming budget which "informs its consideration of broader issues of macro-budgetary strategy, balance and impact".²⁹⁷
- July: The Council of the EU adopts the country specific recommendations.
- July: The Oireachtas Committee on Finance, Public Expenditure and Reform holds oral hearings on submissions.
- July: The Department of Social Protection holds a Pre-Budget Forum²⁹⁸ giving civil society an opportunity to present views and priorities in relation to social welfare expenditure in the context of the forthcoming budget.

Early September:	The Tax Strategy Group is an interdepartmental committee chaired by the Department of Finance, with senior officials and advisors from a number of other departments and the Revenue Commissioners. ²⁹⁹ Papers on various options for the Budget and for the medium and longer term are prepared for the Tax Strategy Group. ³⁰⁰
Mid-October:	The Budget is published. ³⁰¹ The Review of Expenditure is published. ³⁰² Dáil Resolutions are passed which give temporary statutory effect to the Budget (pending the enactment of the Finance Bill).
Late-October:	The Finance Bill is published which gives effect to the provisions in the published Budget. A Social Welfare Bill may also be published. The Bills can be amended and therefore the Budget as published is not a 'final' document.
Oct-December:	The Oireachtas and Committees debate contents of the Finance Bill.
December:	The vote on budgetary legislation takes place.
31 December:	This is the deadline for enactment of the Finance Bill.

- ¹ Tulkens, F., "The European Convention on Human Rights and the Economic Crisis: The Issue of Poverty" EU Working Paper AEL 2013/8, Academy of European Law, Distinguished Lectures of the Academy, p 11
<http://cadmus.eui.eu/bitstream/handle/1814/28099/AEL_2013_08.pdf?sequence=1> (date accessed: 26 August 2014).
- ² Nolan, A., "Budget Analysis and Economic and Social Rights" in Riedel, E. et al., *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges* (Oxford University Press, 2014), 369 at 389.
- ³ Johnstone, R. L. and Amundadóttir, A., "Human rights in crisis: securing the International Covenant on Economic, Social and Cultural Rights (ICESCR) in economic downturns" *Int. J. Human Rights and Constitutional Studies*, Vol. 1, No. 1, 2013, 6 at 7.
- ⁴ Supra note 1 at 11.
- ⁵ The Free Legal Advice Centres is a non-profit organisation promoting access to justice for all. FLAC works on a variety of economic and social rights issues including credit and debit law and social welfare law. FLAC also lobby the Government for better legislation and policy measures to ensure greater respect and enjoyment of all human rights and access to justice.
- ⁶ Civil and political rights include but are not limited to the right to liberty and security of person; freedom from torture, cruel, inhuman or degrading treatment or punishment; equality before the law; the right to privacy; freedom of expression; freedom of opinion; freedom of thought, conscience and religion.
- ⁷ Some elements of ESC rights were protected in earlier International Labour Organisation Conventions.
- ⁸ Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Ireland, E/C.12/1/Add.77, (2002); Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Ireland, E/C.12/1/Add.35, (1999).
- ⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: the right to highest attainable standard of health (Article 12 of the Covenant), 2000, UN. Doc. E/C.12/2000/4.
- ¹⁰ UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The right to adequate housing (Article 11(1) of the Covenant), 1991, UN. Doc. E/1992/23; UN Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing (Article 11(1) of the Covenant): forced evictions, 1997, UN. Doc. E/1998/22.
- ¹¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The right to education (Article 13 of the Covenant), 1999, UN. Doc. E/C.12/1999/10.
- ¹² UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties obligations (Article 2(1) of the Covenant), 1990, U.N. Doc. E/C.12/1991/23.
- ¹³ At the time of writing 15 states have ratified the OP ICESCR including 7 European states and a further 30 states, including Ireland, have signed the OP ICESCR.
- ¹⁴ Article 5(e).
- ¹⁵ Articles 10 -14.
- ¹⁶ See in particular Articles 4 and Articles 24-32.
- ¹⁷ See in particular Articles 23-30.
- ¹⁸ See the website of the International Labour Organisation at:
<http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102901> (date accessed: 9 April 2014).
- ¹⁹ See the website of the International Labour Organisation at: <<http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:0::NO>> (date accessed: 9 April 2014).
- ²⁰ See the UNESCO website at: <http://portal.unesco.org/en/ev.php-URL_ID=12025&URL_DO=DO_TOPIC&URL_SECTION=-471.html> (date accessed: 9 April 2014).
- ²¹ *ERRC v Bulgaria*, Complaint No. 31/2005.
- ²² *Ibid* at 34.
- ²³ Provisions not accepted by Ireland are Article 8(2), Article 21, Article 31(1), 31(2) and 31(3).
- ²⁴ For the full text of the European Social Charter (Revised) see the Council of Europe website at:
<<http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>> (date accessed: 10 March 2014). For fact sheet on Ireland see the Council of Europe website at: <http://www.coe.int/t/dghl/monitoring/socialcharter/countryfactsheets/Ireland_en.pdf> (date accessed: 10 March 2014).
- ²⁵ *World Organisation against Torture v Ireland*, Complaint No. 18/2003. *International Federation of Human Rights v Ireland*, Complaint No. 42/2007.
- ²⁶ *European Roma Rights Centre v Ireland*, Complaint No.100/2013. See also complaint lodged by FIDH
<<http://www.fidh.org/en/europe/ireland/15779-social-housing-fidh-takes-ireland-before-the-european-committee-of-social>> (date accessed: 3 September 2014).
- ²⁷ Amnesty International Ireland, *Bringing ESC Rights home: The case for legal protection of economic, social and cultural rights in Ireland* (2014).
- ²⁸ For all provisions see the European Commission website at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>> (date accessed: 7 April 2014).
- ²⁹ For list of EU legislation on communicable diseases see the European Commission website at:
<http://ec.europa.eu/health/communicable_diseases/early_warning/comm_legislation_en.htm> (date accessed: 7 April 2014).
- ³⁰ Regulation (EC) No 883/2004 and 987/2009.
- ³¹ For example, Protection of Employees (Temporary Agency Work) Act 2012 which transposes EU Directive on Temporary Agency Work 2008/104/EC into national law.
- ³² See European Commission website at: <http://ec.europa.eu/justice/fundamental-rights/charter/implementation/index_en.htm> (date accessed: 15 September 2014).
- ³³ For further detail see presentation by David Fennelly to the Constitutional Convention, 22 February 2014, pp 10-12
<<https://www.constitution.ie/AttachmentDownload.ashx?mid=40c56f1e-b39b-e311-a7ce-005056a32ee4>> (date accessed: 28 February 2014).

³⁴ See *J. McB v L.E.*, Case C-400/10/PPU, 5 October 2010
 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010CJ0400:EN:PDF>> (date accessed: 8 January 2014).

³⁵ For further information and analysis see Hervey, TK., Kenner, J. (eds.), *Economic and Social Rights under the EU Charter of Fundamental Rights: A legal perspective* (Hart Publishing, 2003). See also Douglas-Scott S., “The European Union and Human Rights after the Treaty of Lisbon” (2011) 11 Human Rights Law Review, 645-682. See also the European Commission website at: <<http://ec.europa.eu/justice/fundamental-rights/charter/>> (date accessed: 8 July 2014).

³⁶ See for example *Digital Rights Ireland v The Minister for Communications, Marine and Natural Resources and Ors*, Case C-293/12. The opinion of the Advocate General on this case was given in December: *Digital Rights Ireland (Advocate General's opinion)* [2013] EUECJ C-293/12 (12 December 2013). A preliminary ruling from the CJEU is outstanding. For the list of questions referred by the High Court see the InfoCuria website at:
 <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=125859&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=167537>> (date accessed: 10 July 2014).

³⁷ *Airey v Ireland*, Application No. 6289/73, 9 October 1979, para 26.

³⁸ *Moldovan and Others v Romania*, Application No. 41138/98 and 64320/01, 12 July 2005. See also *Mentes and Others v Turkey* (Article 60), Application No. 23186/94, 24 July 1998.

³⁹ *López Ostra v Spain*, Application No. 16798/90, 9 December 1994.

⁴⁰ See for example *Foy v An t-Ard Cláraitheoir & Others* (No. 2), [2007] IEHC 470.

⁴¹ *Donegan v Dublin City Council & Ors*, [2008] IEHC 288.

⁴² See also *Dublin City Council v Gallagher*, [2008] IEHC 354 and *Foy v An t-Ard Cláraitheoir & Others* (No. 2), [2007] IEHC 470.

⁴³ Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, UN Doc. A/HRC/17/34, 17 May 2011, para 4.

⁴⁴ See for example, Ariranga, G. Pillay, Chairperson, UN Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012
 <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fSUS%2f6395&Lang=en>
 (date accessed: 3 September 2014).

⁴⁵ Way, S-A. et al., “Economic and Social Rights in the ‘Great Recession’” in supra note 2 at 92.

⁴⁶ Ibid at 93.

⁴⁷ It is important to note that the adoption of such measures is not limited to the obligation to fulfil but may also be necessary in order for the State to meet its obligation to respect and protect human rights.

⁴⁸ This is a non-exhaustive list. Further detail can be found in supra note 9 at 36-37.

⁴⁹ UN High Commissioner for Human Rights, *Report on austerity measures and economic and social rights* (OHCHR, 2013), p 13
 <http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf> (date accessed: 2 July 2014).

⁵⁰ Supra note 45 at 97.

⁵¹ See Article 10 ECHR. This was reaffirmed by the European Court of Human Rights in *Társaság a Szabadságjogokért v Hungary*, Application No. 37374/05, 14 April 2009, para 35.

⁵² Commissioner for Human Rights, Council of Europe, Issue Paper, *Safeguarding human rights in times of economic crisis* (Council of Europe, 2013), p 41.

⁵³ Supra note 12.

⁵⁴ Each State Party to the ICESCR must, on a periodic basis, submit a report to the CESCR on the measures it has taken to progressively realise the rights in the ICESCR. The CESCR examines the report and issues concluding observations and recommendations.

⁵⁵ The CESCR has issued a number of statements and letters further elaborating on the nature of States Parties obligations. These are outlined in this AI paper.

⁵⁶ Supra note 12 at 9.

⁵⁷ Ibid.

⁵⁸ Direct discrimination is unfavourable treatment that is, on the face of it, based on prohibited grounds.

⁵⁹ Indirect discrimination occurs where a law, policy or practice appears neutral but results in disproportionate disadvantage or negative impact on the exercise of rights by a particular group. Indirect discrimination on the basis of age, could for example arise in the context of employment, if the employer insisted on an academic degree of recent origin as a requirement for a post.

⁶⁰ Santos Pais, M., “A Human Rights Conceptual Framework for UNICEF” (1999) 9 UNICEF Innocenti Essays, p 8.

⁶¹ Supra note 52 at 22.

⁶² The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN. Doc. E/CN.4/1987/17, para 39.

⁶³ Supra note 52 at 43.

⁶⁴ Supra note 27.

⁶⁵ Supra note 12 at 1-2.

⁶⁶ Ibid at 8.

⁶⁷ UN Committee on Economic, Social and Cultural Rights, “An evaluation of the obligation to take steps to the ‘maximum available resources’ under the Optional Protocol to the Covenant” Statement, 2007, U.N. Doc. E/C.12/2007/1, para 11.

⁶⁸ Supra note 12 at 3.

⁶⁹ Ibid.

⁷⁰ Ibid at 7.

⁷¹ Supra note 62 at 20.

⁷² Supra note 27.

⁷³ Supra note 12 at 10.

- 74 Ramcharan, B. G., *Judicial Protection of Economic, Social and Cultural Rights: Cases and Materials* (Martin Nijhoff Publishers, 2005), p 311.
- 75 Supra note 12 at 10.
- 76 Supra note 52 at 43.
- 77 ILO, Recommendation concerning National Floors of Social Protection, No. 202, 2012; World Bank Group, Development Committee, "Safety Nets Work: During Crisis and Prosperity", 2012; Sepulveda, M. and Nyst, C., *The Human Rights Approach to Social Protection* (Ministry for Foreign Affairs of Finland, 2012) <<http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>> (date accessed: 16 September 2014).
- 78 Supra note 52 at 44.
- 79 Supra note 12 at 10.
- 80 Chapman, A. and Russell, S., *Core Obligations: Building A Framework For Economic, Social and Cultural Rights* (Intersentia, 2002), p 11.
- 81 Dowell- Jones, M., "The Sovereign Bond Markets and Socio-Economic Rights" in supra note 2 at 81.
- 82 Supra note 80 at 11.
- 83 Supra note 45 at 93.
- 84 Supra note 12 at 13.
- 85 Supra note 45 at 94.
- 86 Supra note 67.
- 87 Ibid at 8.
- 88 Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Spain, U.N. Doc. E/C.12/ESP/CO/5, (2012), para 28.
- 89 Office of the UN High Commissioner for Human Rights, *Frequently Asked Questions on Economic, Social and Cultural Rights*, Fact Sheet No. 33, (OHCHR, 2008), p 16.
- 90 See for example, Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Armenia, U.N. Doc. E/C.12/1/Add.39, (1999), paras 3, 6 and 7; Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Bosnia and Herzegovina, E/C.12/BH/CO/1, (2006), para 7.
- 91 See for example, Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Jordan, E/C.12/1/Add.46, (2000), para 27; Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Mongolia, E/C.12/1/Add.47, (2000), para. 10; Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, El Salvador, E/C.12/SLV/CO/2, (2007), para 8.
- 92 Supra note 67 at 10.
- 93 Ibid at 9.
- 94 Supra note 12 at 9.
- 95 Vienna Declaration and Programme for Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993 and Universal Declaration of Human Rights Preamble (1948).
- 96 Supra note 52 at 33. See also supra note 38.
- 97 Dowell- Jones, M. "The Sovereign Bond Markets and Socio-Economic Rights" in Riedel in supra note 2 at 81.
- 98 Alston, P. and Quinn, G., "The Nature and Scope of States Parties Obligations under the International Covenant on Economic, Social and Cultural Rights" (1987) 9 *Human Rights Quarterly* 156 at 164.
- 99 Economic and Social Council, Report of the High Commissioner for Human Rights on the implementation of economic, social and cultural rights, UN. Doc. E/2009/90, 8 June 2009, para 46.
- 100 Ibid.
- 101 Hammerberg, T., "State Budgets Reveal Whether Governments are Committed to Human Rights" Viewpoint, 3 August 2009 <<https://wcd.coe.int/ViewDoc.jsp?id=1477925&Site=CM>> (date accessed: 16 September 2014).
- 102 See also UNIFEM, UNFPA on gender sensitive budgeting; UNDP in relation to governance and democratic participation; UN-Habitat on participatory budgeting; and World Bank. Although not explicitly related to human rights, the World Bank promotes participatory approaches to poverty reduction strategies, including the development of budget monitoring methodologies in support of civil society social accountability networks and grass-roots organisations.
- 103 Supra note 2 at 372.
- 104 See for example, Fundar, *Healthcare: A Question of Rights, Not Charity* (Fundar, 2002).
- 105 See for example, QUB Budget Analysis Project, *Budgeting for Social Housing in Northern Ireland: A Human Rights Analysis* (QUB Law School, Belfast, 2010).
- 106 See for example, IHRIP/International Budget Project, *Reading the Books: Government Budgets and the Right to Education* (IHRIP/IBP, 2010).
- 107 For an analysis of the impact of budget from the perspective of ESC rights of the child see the Centre for Children's Rights website at: <www.haqcrc.org> (date accessed: 8 July 2014).
- 108 For a greater analysis of limits of budget analysis see supra note 2 at 373-388. See also QUB Budget Analysis Project, *Budget Analysis and Economic and Social Rights: A Review of Selected Case Studies and Guidance* (QUB Law School, Belfast, 2010), p 15.
- 109 Fundar, International Budget Project, International Human Rights Internship Program, *Dignity Counts: A guide to using budget analysis to advance human rights* (2004), p 1. <<http://internationalbudget.org/wp-content/uploads/Dignity-Counts-A-Guide-to-Using-Budget-Analysis-to-Advance-Human-Rights-English.pdf>> (date accessed: 4 July, 2014).
- 110 Ibid.
- 111 Ibid.

- ¹¹² See for example, International Budget Partnership, Overy, N., *Impact Case Study of Civil Society Interventions around the Child Support Grant in South Africa*. It demonstrates the impact that budget analysis and other research had on affecting change in the Child Support Grant Scheme in South Africa
<<http://internationalbudget.org/wp-content/uploads/LP-case-study-CSG.pdf>> (date accessed: 4 July, 2014).
- ¹¹³ Nolan, A., "ESR-based Budget Analysis: Conceptual Challenges" in Nolan A., et al., *Human Rights and Public Finance: Budgets & The Promotion of Economic and Social Rights* (Hart publishing, 2013), p 43.
- ¹¹⁴ See for example, Center for Economic and Social Rights, Corkery, A. et al, *The Opera Framework: Assessing compliance with the obligation to fulfil economic, social and cultural rights, Economic and Social Rights Monitoring*, (CESR, 2012).
<<http://www.cesr.org/downloads/the.opera.framework.pdf>> (date accessed: 4 July).
- ¹¹⁵ See Scottish Government website at: <<http://www.scotland.gov.uk/Topics/People/Equality/18507/13477>> (date accessed: 8 July). See also Equality Budget Campaign, Irish Feminist Network, *Equality Budgeting in Ireland: An Information Booklet*, p 9
<http://www.irishfeministnetwork.org/uploads/8/4/9/1/8491921/equality_budgeting_in_ireland_-_an_information_booklet.pdf> (date accessed: 8 July 2014). For an analysis and critique of the Scottish model see The Scottish Women's Budget Group presentation <<https://www.youtube.com/watch?v=groDUItuhw8>> (date accessed: 15 September 2014). See also O'Hagan, A., "Gender Impact Assessment in the United Kingdom" in European Commission, *Exchange of good practices on gender equality: Gender Impact Assessment*, Comments Paper –United Kingdom (2014) <http://ec.europa.eu/justice/gender-equality/files/exchange_of_good_practices_at/uk_comments_paper_at_2014_en.pdf> (date accessed: 15 September 2014). An example of gender budgeting can be seen in Austria. See Bundeskanzleramt Oesterreich, *Gender Budgeting: Making Effective Equality between Women and Men a Reality* (2012) <<https://www.bka.gv.at/DocView.axd?CobId=46720>> (date accessed: 8 July 2014). See also Steger, G., Director General of the Budget Ministry of Finance, Austria, *Gender Budgeting: The Austrian Case* (2013) <http://www.un.org/en/ecosoc/newfunct/pdf/vpd_steger.pdf> (date accessed: 8 July 2014). Other countries which have implemented our worked towards equality budgeting include but are not limited to Canada, South Africa, Tanzania and Uganda.
- ¹¹⁶ Supra note 109.
- ¹¹⁷ Supra note 114.
- ¹¹⁸ QUB Budget Analysis Project, *Budgeting for Economic and Social Rights: A Human Rights Framework* (QUB Law School, Belfast, 2010).
- ¹¹⁹ Supra note 108.
- ¹²⁰ Center for Women's Global Leadership, Balakrishnan, R. et al, *Maximum Available Resources & Human Rights: Analytical Report* (2011).
- ¹²¹ Center for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, Menkos, J., et al, *Rights or Privileges? Fiscal Commitment to the Rights to Health, Education and Food in Guatemala* (2009).
- ¹²² Supra note 112.
- ¹²³ Programme for Government 2011-2016, p 23.
- ¹²⁴ See the Department of Finance website at: <<http://oldwww.finance.gov.ie/viewdoc.asp?DocID=7844>> (date accessed: 16 September 2014).
- ¹²⁵ See the Department of Social Protection website at: <<http://www.welfare.ie/en/pressoffice/pdf/pr040714.pdf>> (date accessed: 16 September 2014).
- ¹²⁶ See the Department of Social Protection website at: <<http://www.welfare.ie/en/Pages/Social-impact-assessment-of-the-main-.aspx>> (date accessed: 16 September 2014). These impact assessments do not encompass human rights.
- ¹²⁷ See the Oireachtas website at: <<http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-23390-en.html>> (date accessed: 16 September 2014).
- ¹²⁸ Joint Committee on Finance, Public Expenditure and Reform, Report on 2015 Pre-Budget Submissions (August 2014) <<http://www.oireachtas.ie/parliament/media/committees/finance/Final-Report-on-2015-Pre-budget-submissions.pdf>> (date accessed: 3 September 2014).
- ¹²⁹ See Kildare street website at: <<https://www.kildarestreet.com/debates/?id=2013-10-08a.277>> (date accessed: 10 September 2014) and <<https://www.kildarestreet.com/debates/?id=2014-06-26a.162>> (date accessed: 10 September 2014).
- ¹³⁰ Kelly, F., "Economic committee should be open to big departments-Burton" *The Irish Times* (13 June 2014)
<<http://www.irishtimes.com/news/politics/economic-committee-should-open-to-big-departments-burton-1.1830577>> (date accessed: 3 September 2014).
- ¹³¹ Article 17.2 of the Constitution which prevents the Dáil from passing a vote or resolution or enacting any law, involving the appropriation of revenue or other public monies unless this has been recommended to the Dáil by a message from the Government, signed by the Taoiseach. For criticism of this see for example Kildare street website at:
<<https://www.kildarestreet.com/debates/?id=2014-04-16a.397&s=%22budget+reform%22>> (date accessed: 3 September 2014) and the Oireachtas website at: <<http://www.oireachtas.ie/documents/bills28/bills/2014/3314/b3314d.pdf>> (date accessed: 3 September).
- ¹³² Supra note 5.
- ¹³³ See FLAC's pre-budget submission 2011 on <www.flac.ie> (date accessed: 8 September 2014).
- ¹³⁴ FLAC, *Realising Rights in a Recession* (2011)
<http://www.flac.ie/download/pdf/maintaining_rights_in_a_recession_final_27_july_2011.pdf> (date accessed: 8 September 2014).
- ¹³⁵ FLAC, *Realising Rights in a Recession*, Fact Sheet (2011) <<http://www.flac.ie/publications/flacsheet-on-realising-rights-in-a-recession/>> (dates accessed: 8 September 2014).

- ¹³⁶ NESRI, *Moving Towards Human Rights Budgeting: Examples from Around the World*, Background briefing (2012) <http://www.nesri.org/sites/default/files/Moving_Toward_Human_Rights_Budgeting.pdf> (date accessed: 15 September 2014). See also, Rudiger, A., "Towards a People's Budget: Vermont Adopts New Vision for State Spending and Revenue Policies" *Huffington Post* (May 4, 2012) <<http://www.nesri.org/news/2012/05/toward-a-peoples-budget-vermont-adopts-new-vision-for-state-spending-and-revenue-policies-huffington-post>> (date accessed: 15 September 2014).
- ¹³⁷ Resolution A/HRC/RES/S-10/1 of the UN Human Rights Council, "The impact of the global economic and financial crises on the universal realisation and effective enjoyment of human rights", 23 February 2009.
- ¹³⁸ *Ibid* at preambular paragraph.
- ¹³⁹ *Ibid* at 5.
- ¹⁴⁰ *Ibid* at 6.
- ¹⁴¹ *Ibid* at 5.
- ¹⁴² See for example, Office of the High Commissioner for Human Rights, Press Conference by UN High Commissioner for Human Rights, Navi Pillay, Opening statement, (18 October 2012).
- ¹⁴³ Office of the UN High Commissioner for Human Rights, *Report on austerity measures and economic and social rights* (2013) <http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf> (date accessed: 17 September 2014).
- ¹⁴⁴ *Ibid* at 7.
- ¹⁴⁵ *Ibid*.
- ¹⁴⁶ *Supra* note 143.
- ¹⁴⁷ *Supra* note 8.
- ¹⁴⁸ See for example UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to health; General Comments No. 4 and No. 7: the right to adequate housing/forced evictions; General Comment No. 12: The right to adequate food; General Comment No.13: The right to education; General Comment No. 15: The right to water; General Comments No. 21 and No. 17: Cultural rights; General Comment No.18: The right to work; General Comment No.19 : The right to social security. This is a non-exhaustive list. For an exhaustive list of all General Comments by the UN Committee on Economic, Social and Cultural Rights see the OHCHR website at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11> (date accessed: 17 September).
- ¹⁴⁹ These include UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties obligations (Article 2(1) of the Covenant); General Comment No. 9: The domestic application of the Covenant; and General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2(2) of the Covenant).
- ¹⁵⁰ UN Committee on Economic, Social and Cultural Rights, General Comment No. 2: International technical assistance measures (Article 22 of the Covenant), Fourth Session, 1990, UN. Doc. E/1990/23, para 9.
- ¹⁵¹ *Ibid* at 9.
- ¹⁵² *Ibid*.
- ¹⁵³ *Supra* note 27.
- ¹⁵⁴ *Supra* note 148.
- ¹⁵⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: the right to adequate housing (Article 11(1) of the Covenant), Sixth Session 1991, UN. Doc. E/1992/23, para 11.
- ¹⁵⁶ *Ibid* at 19.
- ¹⁵⁷ *Supra* note 9 at 32.
- ¹⁵⁸ *Ibid* at 64.
- ¹⁵⁹ *Ibid*.
- ¹⁶⁰ *Ibid*.
- ¹⁶¹ *Supra* note 88 at 8.
- ¹⁶² *Ibid*.
- ¹⁶³ *Supra* note 9 at 43.
- ¹⁶⁴ *Supra* note 161 at 17.
- ¹⁶⁵ UN Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, Third periodic reports of States parties due in 2007, Ireland, UN. Doc. E/C.12/IRL/3, 8 November 2013. The list of issues for the State will be drawn up by the CESCR following its pre-session meeting in December 2014.
- ¹⁶⁶ *Supra* note 43.
- ¹⁶⁷ *Ibid*.
- ¹⁶⁸ Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, Addendum, Mission to Ireland, UN Doc. A/HRC/17/34/Add.2, 17 May 2011.
- ¹⁶⁹ The title has since changed to Special Rapporteur.
- ¹⁷⁰ *Supra* note 168 at summary.
- ¹⁷¹ *Ibid* at 21, 22-38.
- ¹⁷² *Ibid* at 22-38.
- ¹⁷³ *Ibid* at 54.
- ¹⁷⁴ *Ibid* at 95.
- ¹⁷⁵ Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, UN. Doc. A/HRC/20/25, 5 April 2012, para 10.
- ¹⁷⁶ Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, particularly Economic, Social and Cultural Rights, Mr. Cephias Lumina, Mission to Greece, 22-26

April 2013, end of mission statement, 26 April 2013.
 <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13272&LangID=E>> (date accessed: 25 July 2014).

177 Report of Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, particularly Economic, Social and Cultural Rights, Cephias Lumina, mission to Greece, UN. Doc. A/HRC/25/50/Add.1, 27 March 2014, para 42.

178 Ibid at 44-84.

179 Supra note 177 at 92(c).

180 Saiz, I., “Resourcing Rights: Combating Tax Injustice from a Human Rights Perspective”, in supra note 113 at 77.

181 Concluding Observations Observations of the UN Committee on Economic, Social and Cultural Rights, Hong Kong, UN Doc. E/C.12/1/Add. 58, 2001, para 14; Concluding Observations of the UN Committee on the Rights of the Child, Georgia, UN Doc. CRC/C/15/Add. 124, 2000, paras 18-19, followed up in Concluding Observations of the UN Committee on the Rights of the Child, Georgia, UN Doc. CRC/C/15/ADD.222, 2003; Concluding Observations of the UN Committee on the Rights of the Child, Guatemala, UN Doc. CRC/C/GTM/CO/3-4, 2010, paras 25-26.

182 Mr Andrej Hunko, Rapporteur, Committee on Social Affairs, Health and Sustainable Development, “Austerity measure- a danger for democracy and social rights” Doc. 12633, Reference 3785 of 24 June 2011. 2012 – Third part- session.

183 Report of the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, Philip Alston, Mission to Guatemala, UN Doc. A/HRC/4/20/Add.2, 19 February 2007, para 61.

184 Report of the Special Rapporteur on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, UN Doc. A/HRC/26/28, 22 May 2014, summary.

185 See for example, Center For Economic and Social Rights, *Mauled by the Celtic Tiger: Human Rights in Ireland’s Economic Meltdown*, Rights in Crisis Briefing Paper (CESR, 2012).

186 Ibid para 27.

187 Ibid para 25.

188 Ibid para 28.

189 Supra note 180.

190 IMF Policy Paper, *Fiscal Policy and Income Inequality*, 23 January 2014
 <<http://www.imf.org/external/np/pp/eng/2014/012314.pdf>> (dated accessed: 24 July 2014).

191 Supra note 185 at 46.

192 Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, Mission to Brazil, UN Doc. A/HRC/13/33/Add.6, 19 February 2009, para 36. See also supra note 180 at 85.

193 Lustig, N., “Taxes, Transfers and Income Redistribution in Latin America” World Bank, *Inequality in Focus*, Volume 1, Number 2, July 2012 <<http://siteresources.worldbank.org/EXTPOVERTY/Resources/InequalityInFocusJuly2012FINAL.pdf>> (date accessed: 24 July 2014).

194 Supra note 185 at 22.

195 Ibid.

196 Supra note 177 at 12.

197 Report of Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, particularly Economic, Social and Cultural Rights, Cephias Lumina, Guiding Principles on Foreign Debt and Human Rights, UN Doc. A/HRC/20/23, 10 April 2011, para 9.

198 Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, UN Doc. A/HRC/17/31, 21 March 2011.

199 See also Clapham, A., *Human Rights Obligations of Non-State-Actors* (Oxford University Press, 2006), 137-159; Reinisch A., “The Changing International Legal Framework for Dealing with Non- State Actors” in Alston, P., (ed.), *Non-State Actors and Human Rights* (Oxford University Press, 2005); Mac Darrow, *Between Light and Shadow: the World Bank, the International Monetary Fund an International Human Rights Law* (Hart Publishing, 2003).

200 Supra note 185 at 82(c).

201 Supra note 177 at 93(f).

202 Supra note 52 at 48.

203 Supra note 197 at 1.

204 Ibid at 8.

205 The Guiding principles are available on the OHCHR website at :
 <<http://www.ohchr.org/en/Issues/Development/IEDebt/Pages/GuidingPrinciples.aspx>> (date accessed: 28 July 2014).

206 Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, Annual activity report 2012 , CommDH (2013) 5, 10 April 2013.

207 Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, on his visit to Portugal, CommDH (2012) 22, 10 July 2012.

208 Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, on his visit to Spain, CommDH (2013) 18, 9 October 2013.

209 Council of Europe Commissioner for Human Rights, *Austerity measures weaken human rights protection in Spain*, Strasbourg, 09/10/2013.

210 Supra note 52.

211 Ibid at 19, where the Commissioner for Human Rights explained: “Many people have faced setbacks in their right to water as a result of austerity. As a condition for international assistance from the EC, ECB and IMF, new fees for domestic water use have been introduced in Ireland, for example. Long-standing concerns about decreased attention to water infrastructure maintenance have been accentuated as a result of austerity measures, with serious risks associated with the quality and accessibility of water.

- Plans to privatise water utilities have been part and parcel of several austerity packages which may threaten the affordability of water and the effective accountability of water supplies.”
- 212 Ibid at 21.
- 213 Ibid.
- 214 Ibid at 9 -12.
- For further information on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights see AI Ireland’s second paper in the *Bringing ESC Rights Home* series, *Ireland and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (2014).
- 215 See Council of Europe Parliamentary Assembly, Resolution 1651, “Consequences of the global financial crisis” 29 January 2009.
- 216 Council of Europe Parliamentary Assembly, Resolution 1884, “Austerity measures- a danger for democracy and social rights” 26 June 2012.
- 217 Ibid.
- 218 European Parliament, “Impact of financial and economic crisis on human rights” A7-0057/2013, 18 April 2013.
- 219 Ibid.
- 220 European Committee of Social Rights, *Conclusions 2009*, Vol. I, para 7.
- 221 See for example: FLAC; Focus Ireland; Social Justice Ireland; Peter McVerry Trust; TASC; Vincentian Partnership for Social Justice; Children’s Rights Alliance; Focus Ireland; Threshold; European Anti-Poverty Network; Age Action Ireland. See also pre-budget submissions on the Oireachtas website at: <http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/fper-committee/2015pre-budgetsubmissions> (date accessed: 18 August 2014).
- 222 Supra note 184 at 4.
- 223 Oxfam Case Study, *The True Cost of Austerity And Inequality: Ireland Case Study* (Oxfam International, 2013), p 3.
- 224 Supra note 184 at 14.
- 225 Supra note 223 at 8.
- 226 Supra note 184 at 24.
- 227 Ibid.
- 228 Ibid at 13.
- 229 Supra note 223 at 25.
- 230 Ibid at 25.
- 231 Supra note 184 at 25. “An ex-post assessment of recovery and austerity measures from the perspective of their human rights impact should be carried out and its findings should form the basis for a revised rights-centered national economic recovery plan. The assessment should review data on changing levels of [ESC] rights enjoyment since the crisis, as well as evaluating social and fiscal policies over this period from the perspective of their compliance with the substantive human rights principles of non-retrogression, non-discrimination and progressive realisation according to maximum available resources, as well as the procedural principles of transparency, accountability and participation. [ESC] rights indicators should be disaggregated so as to track the situation of disadvantaged groups ... this exercise should inform corrective measures to address the current retrogression of [ESC] right”.
- 232 Ibid.
- 233 Supra note 223 at 25.
- 234 Supra note 184 at 26.
- 235 Supra note 223 at 25.
- 236 Supra note 184 at 26.
- 237 Sepulveda, M., “Access to Justice and the Fight Against Poverty”, at *Justice 2015: How access to justice can help reduce poverty*, Proceedings of the Avocats Sans Frontières (ASF) Conference (Brussels, 22 May 2013) <www.asf.be> (date accessed: 26 August 2014).
- 238 Judgment on behalf of the Republic of Latvia in Riga, on 21 December 2009, in case No. 2009-43-01.
- 239 Law on State Pension and State Allowance Disbursement.
- 240 See “Romanian Pension Cut Ruled Illegal” *BBC* (25 June, 2010) <<http://www.bbc.com/news/10421118>> (date accessed: 25 September 2014).
- 241 See for example Timu, A., and Savu, I., “Romanian Court Rejects Challenges to IMF-Backed Pension Law Changes” *Bloomberg* (6 October, 2010) <<http://www.bloomberg.com/news/2010-10-06/romanian-court-begins-debate-on-challenges-to-imf-backed-pension-changes.html>> (date accessed: 22 August 2014). The first case related to proposals to cut pensions by 15 per cent. The second case related to raising the retirement age to 65 for both men and women and future inflation-tied pensions.
- 242 O’Donovan, D., “A Twilight of Sovereignty: Eastern Europe’s Constitutional Courts, the IMF and Government Austerity Programmes” *Human Rights in Ireland Blog* (25 November 2010) <<http://humanrights.ie/constitution-of-ireland/a-twilight-of-sovereignty-eastern-europes-constitutional-courts-the-imf-and-government-austerity-programmes/>> (date accessed: 22 August 2014).
- 243 Lane Scheppele, K., “Democracy by Judiciary. Or, Why Courts Can Be More Democratic than Parliaments” in Czarnote A., et al (eds) *Rethinking the Rule of Law after Communism* (CEU Press, 2005), pp 25-60 at 46.
- 244 Langford M., “Social Rights or Market Redivivus” in Langford, M., (eds) *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press, 2008), p 256.
- 245 Decision 43/1995: 30 June 1995, para 1.
- 246 Decision 43/1995: 30 June 1995, section II.
- 247 Supra note 244 at 257.
- 248 Ibid at 258.
- 249 The directive principles in the Hungarian Constitution which support marriage, family and mothers were referenced.

250 Langford notes that the case led to a number of other findings of unconstitutionality regarding number of other measures introduced by the Government. These are discussed in further detail in Supra note 244 at 258.

251 Articles 58-79 of the Portuguese Constitution.

252 See for example Constitutional Court of Portugal (*Tribunal Constitucional Portugal*), Decision (*Acórdão*) No. 39/84, 11 April 1984. Also referred to the NHS case and discussed in Chapter 7 of AI Ireland's paper, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.

253 It should be noted that the European Court of Human Rights has also ruled on cuts to pensions adopted by the Portuguese Government. The Court found that the State had balanced the interests of the individual against the general interest of the community based on Article 1 of Protocol No. 1 (protection of property).

254 See for example *Government of the Republic of South Africa and Others v Grootboom*, 2001 (1) SA 46 (CC).

255 *Basic Education for All and Others v Minister of Basic Education and Others*, 2014 (4) SA 274 (GP)

256 Unlike other ESC rights the right to basic education in the South African Constitution is not subject to progressive realisation.

257 Honermann, B., "Engaging the Budgetary Process Through Socio-Economic Rights Litigation" O' Neill Institute for National and Global Health, Georgetown University <http://www.oneillinstituteblog.org/engaging-budgetary-process-socio-economic-rights-litigation/#.U_NzhRyCtAl.twitter> (date accessed: 25 August 2014).

258 Ibid.

259 European Committee of Social Rights, Decision on the Merits, Complaints No. 76/2012, 77/2012, 78/2012, 79/2012, 80/2012, 7 December 2012, para 62 <http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC76Merits_en.pdf> (date accessed: 26 August 2012).

260 Measures proposed included the valorisation of public property, introduction of capital tax and/or tax on stock exchange and market intermediaries, the combating of tax fraud, more productive employment, or at least measures affecting the capital of social security funds.

261 Supra note 259 at 66.

262 Ibid.

263 *Stec and Others v the United Kingdom*, Application No. 65731/01 and 65900/01, 12 April 2006. *Rasmussen v Poland*, Application No. 3886/05, 28 April 2009. *Kjartan Asmundsson v Iceland*, Application No. 60669/00, 12 October 2004.

264 Supra note 216.

265 Supra Note 259 at 78.

266 Article 12(3) European Social Charter.

267 Supra note 259 at 81.

268 Ibid at 79.

269 Supra note 1.

270 Tulkens also addresses the right to peaceful enjoyment of possessions, right to private and family life which are not considered here.

271 *Koufaki and Adedy v Greece*, Application No. 57665 and 57657, 7 May 2013.

272 *N.K.M. v Hungary*, Application No. 66529/11, 14 May 2013.

273 Ibid at 37.

274 Supra note 1 at 4.

275 Supra note 37 at 26.

276 *James v the United Kingdom*, Application No. 8793/79, 21 February 1986.

277 *Mellacher and Others v Austria*, Application No. 10522/83 and 11011/84 and 11070/84, 19 December 1989, para 45.

278 *Hutton-Czapska v Poland*, Application No. 35014/97, 19 June 2006.

279 Ibid at 234.

280 *Larioshna v Russia*, Application No. 56869/00, 23 April 2002.

281 Ibid at 3. See also *Budina v Russia*, Application No. 45603/05, 18 June 2009.

282 *M.S.S. v Belgium and Greece*, Application No. 30696/06, 21 January 2011.

283 Ibid at 253. Quoting from *Budina v Russia*, Application No. 45603/05, 18 June 2009.

284 Supra note 282 at 223. See also *Hirsi Jamaa and Others v Italy*, Application No. 2775/09, 23 February 2012.

285 Ibid at 263.

286 Ibid at 263-264. A violation of Article 13 (effective remedy was also found) in conjunction with Article 3 was also found due to inefficiencies in the asylum procedures in Greece. The ECtHR also held that Belgium had violated Article 13 and Article 3.

287 For a discussion of progressive and regressive taxation measures see Chapter 4.

288 This reflects the observations by the UN Independent Expert on Foreign Debt (outlined in Chapter 4) regarding the adoption of independent, transparent and participatory measures (for example audits) to investigate the origins of debt and identify those responsible.

289 General Scheme of the Judicial Council Bill 2010, Head 5: Functions of Judicial Council, 2(1) (e). <<http://www.inis.gov.ie/en/JELR/General%20Scheme%20Judicial%20Bill.pdf/Files/General%20Scheme%20Judicial%20Bill.pdf>> (date accessed: 18 September 2014).

290 General Scheme of the Judicial Council Bill, Head 5: Functions of Judicial Council, 2(1)(d).

291 The SPU is the official macro-economic and fiscal forecasts for Ireland out to 2018 and is the first update of the Government's macroeconomic and fiscal projections since Budget 2014 in October of last year. When Ireland exited the EU-IMF programme it joined the 'European Semester' programme which is a yearly cycle of economic policy coordination called the European Semester.

292 National Reform Programme Ireland, April 2014 <http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_ireland_en.pdf> (date accessed: 18 September 2014).

293 The SPU requires the Government to give an explanation of the Excessive Deficit Procedure which operationalises the limits on

- the budget deficit and public debt given by the thresholds of 3% of deficit to GDP and 60% of debt to GDP not diminishing at a satisfactory pace.
- ²⁹⁴ European Commission, Recommendation for a Council Recommendation on Ireland's 2014 national reform programme and delivering a Council opinion on Ireland's 2014 stability programme, SWD(2014) 408 final <http://ec.europa.eu/europe2020/pdf/csr2014/csr2014_ireland_en.pdf> (date accessed: 18 September 2014).
- ²⁹⁵ The Council of the EU is the institution representing the Members states' governments. It is where national ministers from each EU country meet to adopt laws and coordinate policies.
- ²⁹⁶ An EU institution, consisting of the Heads of State or Government of the Member states, together with its President and the President of the Commission. It defines the general political direction and priorities of the EU.
- ²⁹⁷ See Oireachtas website at <<http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-22540-en.html>> (date accessed: 18 September 2014).
- ²⁹⁸ See Department of Social Protection website at: <<http://www.welfare.ie/en/pressoffice/pdf/pr040714.pdf>> (date accessed: 18 September 2014).
- ²⁹⁹ The Tax Strategy Group is an interdepartmental committee chaired by the Department of Finance, with membership comprising senior officials and advisors from the Departments of Finance, Taoiseach, Enterprise Trade and Employment, Social Community and Family Affairs and the Revenue Commissioners. Papers on various options for the Budget and for the medium and longer term are prepared for the Tax Strategy Group.
- ³⁰⁰ See the Department of Finance website at: <<http://www.finance.gov.ie/what-we-do/tax-policy/tax-strategy-group/tsg-2013/tsg-2013>> (date accessed: 18 September 2014). The terms of reference for the Tax Strategy Group are as follows:
To examine and develop proposals for measures in the areas of taxation, PRSI and levies, for Budget and Finance Bill within agreed Government parameters for the overall Budget position and in the context of the framework of a medium term and longer term strategy set out in the Government's programme; and
To examine the strategic approach for a general social welfare package and to assess the interaction of income tax/PRSI/levies proposals with social welfare proposals including child income support, and in particular the impact of this interaction on the labour market and income distribution.
- ³⁰¹ According to Article 17.2 of the Constitution no law shall be enacted that may create a charge on the State unless that has been personally proposed by the Taoiseach.
- ³⁰² For further information on the Review of Expenditure see the Merrion Street website at: <<http://www.merrionstreet.ie/index.php/2014/07/minister-howlin-launches-public-consultation-on-the-comprehensive-review-of-expenditure-3/>> (date accessed: 19 September 2014).

AMNESTY
INTERNATIONAL



Amnesty International Ireland

Amnesty International is a worldwide movement of people that campaign for the protection of the fundamental human rights guaranteed to each one of us by the Universal Declaration of Human Rights. In Ireland, Amnesty International campaigns to strengthen the legal protection of economic, social and cultural rights.

For more information on our campaigns contact us at:

Amnesty International Ireland
Seán MacBride House
48 Fleet Street
Dublin 2
01 8638300

www.amnesty.ie

AMNESTY
INTERNATIONAL

